

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 SHI 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.

7. **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 SHI for any reason are hereby deleted.
8. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by SHI in any way associated with the Agreement.
9. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to dispute resolution or binding arbitration. Therefore, any references to dispute resolution or binding arbitration or to the waiver of a right to litigate a dispute are hereby deleted.
10. **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.
11. **Certain State Law and County 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, SHI verifies SHI does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - b. Texas Government Code §2252.152 Acknowledgment. By signature below, SHI represents pursuant to Section 2252.152 of the Texas Government Code, that SHI is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2252.153.
 - c. Resolution of Fort Bend County Against Human Trafficking. By signature below, SHI 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.
12. **Entire Agreement.** This Agreement, together with all agreements between the Parties referenced in this Addendum, embodies the entire understanding between the Parties with respect to the Terms and Conditions, and there are no prior effective representations, warranties or agreements between the parties with respect to the Terms and Conditions. This Agreement shall supersede and replace all previous agreements pertaining to the Terms and Conditions between any of the parties. No waiver of any provision hereof shall be effective, unless set forth in a written instrument signed by authorized representatives of each of the Parties.
13. **Grant Funding.** SHI understands that and acknowledges that this Agreement may be totally or partially funded with federal funds. SHI represents and warrants that it is and will remain in compliance with all applicable federal provisions, including those attached as Exhibit "C" attached hereto and incorporated herein for all purposes.
14. **Conflict.** In the event there is a conflict between this Addendum and the attached Quotation

#19038171, this Addendum controls. In the event there is a conflict between this Addendum and the terms and conditions of the Texas Contract DIR-TSO-3984, then the terms and conditions of Contract DIR-TSO-3984 controls to the extent of the conflict.

15. **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.

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

SHI GOVERNMENT SOLUTIONS, INC.

KP George
County Judge

Kristina Mann

Authorized Agent – Signature

Date

Kristina Mann

Authorized Agent- Printed Name

ATTEST:

Sr. Lead Contract Specialist

Title

Laura Richard
County Clerk

9/24/2020

Date

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: SHI's Quotation # 19285344;

Exhibit B: Texas Department of Information Resources Agreement Contract Number DIR-TSO-3480; and

Exhibit C: Federal Clauses

Exhibit A



Pricing Proposal
 Quotation #: 19285344
 Created On: 8/14/2020
 Valid Until: 8/31/2020

County of FORT BEND

clay elliott
 500 Liberty St
 Richmond, TX 77469
 United States
 Phone: (281) 341-4588
 Fax:
 Email: clay.elliott@fortbendcountytexas.gov

Inside Account Manager

Jeremy Freedman
 Questions, quote requests, and
 PO's please send to:
 Texas@shi.com

SHI Government Solutions
 3828 Pecana Trail
 Austin, TX 78749
 Phone: 1-800-870-6079 x 6526675
 Fax: 512-732-0232
 Email: Jeremy_Freedman@shi.com

All Prices are in US Dollar (USD)

| Product | Qty | Retail | Your Price | Total |
|---|-----|----------|------------|------------|
| 1 Fujitsu ScanSnap iX1500 - Document scanner - Duplex - 216 x 3000 mm - 600 dpi x 600 dpi - up to 30 ppm (mono) / up to 30 ppm (color) - ADF (50 sheets) - Wi-Fi, USB 3.1 Gen 1 - TAA Compliant Fujitsu - Part#: PA03770-B215 Contract Name: Education IT Contract #: DIR-TSO-3480 | 20 | \$495.00 | \$421.00 | \$8,420.00 |
| | | | Subtotal | \$8,420.00 |
| | | | Shipping | \$0.00 |
| | | | Total | \$8,420.00 |

Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

Thank you for choosing SHI-GS! The pricing offered on this quote proposal is valid through the expiration date set above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order. SHI Government Solutions, Inc. is 100% Minority Owned, Woman Owned Business. TAX ID# 22-3695478; DUNS# 14-724-3096

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.

Exhibit B

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
SHI GOVERNMENT SOLUTIONS, INC.

1. Introduction

A. Parties

This Contract for Products and Related Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and SHI Government Solutions, Inc. (“Vendor”), with its principal place of business at 1301 South Mo-Pac Expressway, Suite 375, Austin Texas 78746.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-213, on August 4, 2014, for Education Information Technology (IT) Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-213 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-213, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-213, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional

calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Education Information Technology (IT) Products and Related Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

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

4. Pricing

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

5. DIR Administrative Fee

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

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759

Vendor Contract No. _____

Email: dana.collins@dir.texas.govIf sent to the Vendor:

Victoria Pubylski
SHI Government Solutions, Inc.
1301 South Mo-Pac Expressway, Suite 375
Austin Texas 78746
Phone: (512) 582-6724
Facsimile: (512) 732-0232
Email: victoria_pubylski@shi.com

7. Software License Agreements

A. Shrink/Click-wrap License Agreement

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

B. Conflicting or Additional Terms

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

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

Vendor Contract No. _____

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

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

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

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

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

No exceptions have been agreed to by DIR and Vendor.

(Remainder of Page Intentionally Left Blank)

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

SHI GOVERNMENT SOLUTIONS, INC.

Authorized By: Signature on File

Name: Cassie Skelton

Title: Sr. Contract Specialist

Date: 8/30/2016

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 8/31/2016

Office of General Counsel: DB 8/31/2016

Appendix A
Standard Terms and Conditions for Product and Services Contracts

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

1. Contract Scope .

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall provide the products and services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfillers and/or Reseller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees.

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and services will be procured through the Contract.

3. Definitions

A. **Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

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

- used computer equipment to public school students and their families; and
9) A nonprofit organization that provides affordable housing.

- B. **Compliance Check** – an audit of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. **Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. **CPA** – refers to the Texas Comptroller of Public Accounts.
- E. **Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. **Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. **Reseller** – any third party approved by Vendor to sell to eligible Customers under this Contract. Vendor will flow this Contract’s terms and conditions to its Resellers under his Contract, except that pricing shall be as follows: Vendor offers pricing to its Reseller(s) and such Resellers shall resell to the eligible Customers products under this Contract at or below the price(s) in Appendix C, Pricing Index, of this Contract. Resellers may receive Purchase Orders and fulfill them in their own name. All terms and conditions of this Contract shall apply to both Vendor and Reseller.
- H. **Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- I. **State** – refers to the State of Texas.

4. **General Provisions.**

A. **Entire Agreement**

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

B. **Modification of Contract Terms and/or Amendments**

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

2) DIR may amend the contract upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.

3) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller and Reseller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any

Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

4) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, price (subject to the maximum prices set forth in Appendix C), and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

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

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

D. Assignment

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

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

E. Survival

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

F. Choice of Law

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

G. Limitation of Authority

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

H. Proof of Financial Stability

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

I. Data Location

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

5. Intellectual Property Matters

A. Definitions

1) "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or

conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

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

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

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

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

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor

and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

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

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such

written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

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

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

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

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

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

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

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

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

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

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

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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

B. Use of Order Fulfillers and Resellers

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

1) Designation of Order Fulfillers and Resellers

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

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

c) Vendor shall be fully liable for its Order Fulfillers' and Resellers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and Resellers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and Resellers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers and Resellers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Fulfiller or Reseller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiller and Reseller List

Vendor may add or delete Order Fulfillers and Resellers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers and Resellers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfillers and Reseller information listed in Section 7.B.1.a above.

3) Order Fulfiller and Reseller Pricing to Customer

Order Fulfiller and Reseller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as

set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall only be offered by Order Fulfillers and Resellers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

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

D. Customer Site Preparation

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

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. Vendor must use a web hosting service that provides a dedicated internet protocol (IP) address. Vendor's website must have a Secure Sockets Layer (SSL) certificate and customers must access Vendor's website using Hyper Text Transfer Protocol **Secure** (HTTPS) and it will encrypt all communication between customer browser and website. The webpage must include:

- a) the products and services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP;
- e) MSRP or DIR Customer price;
- f) designated Order Fulfillers and Resellers;
- g) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers and Resellers;
- h) instructions for obtaining quotes and placing Purchase Orders;
- i) warranty policies;
- j) return policies;
- k) links to manufacturer Voluntary Product Accessibility Template (VPAT) for applicable products awarded;
- l) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- m) a link to the DIR "Cooperative Contracts" webpage; and
- n) the DIR logo in accordance with the requirements of this Section.

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

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Webpage Compliance Checks

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

4) Webpage Changes

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

5) Use of Access Data Prohibited

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

6) Responsibility for Content

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

F. DIR Logo

Vendor and Order Fulfiller and Reseller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller or Reseller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller and Reseller Logo

If DIR receives Vendor's or Order Fulfiller's or Reseller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's and Reseller's name and logo in the promotion of the Contract to

communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's or Reseller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's or Reseller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller and Reseller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers and Resellers may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's and Reseller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers and Resellers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's and Reseller's booth.

I. Orientation Meeting

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

J. Performance Review Meetings

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

K. DIR Cost Avoidance

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

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Customer Price

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

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

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

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

3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not

exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

G. Changes to Prices

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

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

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller or Reseller. Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfillers or Reseller when accepted by Vendor or Order Fulfiller or Reseller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

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

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Invoices shall be submitted by the Vendor or Order Fulfiller or Reseller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Vendor or Order Fulfiller or Reseller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

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

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

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

9. Contract Administration

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

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

1) State Contract Manager

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

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller or Reseller and a Customer, and iii) advising DIR of Order Fulfillers or Resellers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Vendor and Order Fulfillers and Resellers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the

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

3) Historically Underutilized Businesses Subcontract Reports

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

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

4) DIR Administrative Fee

a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment.

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

5) Accurate and Timely Submission of Reports

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

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery

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

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

C. Records and Audit

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

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

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

3) Vendor and/or Order Fulfillers and/or Resellers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfiller and/or Resellers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers and/or Resellers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or

electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller and/or Reseller personnel familiar with the Vendor's and/or Order Fulfiller's and/or Reseller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller and/or Reseller shall provide adequate office space to DIR staff during the performance of Compliance Check. DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

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

D. Contract Administration Notification

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

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

10. Vendor Responsibilities

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

A. Indemnification

1) INDEPENDENT CONTRACTOR

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

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers or Resellers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

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

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

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

4) PROPERTY DAMAGE

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

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

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

WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

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

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

- (viii) as of the effective date of the Contract, are not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and

- (xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.
- (xx) represent and warrant with Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate

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

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

D. Education Department General Administrative Regulations (EDGAR)

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

E. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Fulfiler 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.



HUB SUBCONTRACTING PLAN (HSP)

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

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

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

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders contracts,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

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

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

For assistance in completing the HSP, contact the HUB Coordinator, at dir.hub@dir.texas.gov or lisa.maldonado@dir.texas.gov 512-463-5662 or lynn.sanchez@dir.texas.gov 512-463-9813

SECTION 1 RESPONDENT AND REQUISITION INFORMATION

| | |
|--|--|
| a. Respondent (Company) Name: <u>SHI/Government Solutions</u> | State of Texas VID #: <u>1-22-369-5478-500</u> |
| Point of Contact: <u>Darron Gross</u> | Phone #: <u>512-732-8012</u> |
| E-mail Address: <u>Darron_Gross@shi.com</u> | Fax #: <u>512-732-0232</u> |
| b. Is your company a State of Texas certified HUB? <input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No | |
| c. Requisition/ Contract #: <u>DIR-TSO-TMP-213</u> | Bid Open/ Revision Date: <u>9/16/2014</u> |

Enter your company's name here: SHI/Government Solutions Requisition /Contract #: DIR-TSO-TMP-213

SECTION 2 SUBCONTRACTING INTENTIONS

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

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

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If No, continue to SECTION 3 and SECTION 4.)

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

| Item # | Subcontracting Opportunity Description | HUBs | | Non-HUBs |
|--|--|--|--|---|
| | | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less. | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years. | Percentage of the contract expected to be subcontracted to non-HUBs . |
| 1 | | % | % | % |
| 2 | | % | % | % |
| 3 | | % | % | % |
| 4 | | % | % | % |
| 5 | | % | % | % |
| 6 | | % | % | % |
| 7 | | % | % | % |
| 8 | | % | % | % |
| 9 | | % | % | % |
| 10 | | % | % | % |
| 11 | | % | % | % |
| 12 | | % | % | % |
| Total Aggregate percentages of the contract expected to be subcontracted (all 3 columns cannot exceed 100%): | | % | % | % |

(Note: If you have more than twelve subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

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

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

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

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

Appendix C Pricing Index (Per Amendment 6)

DIR-TSO-3480

SHI Government Solutions, Inc.

| Brand | DIR Customer Discount % off MSRP * |
|--|---------------------------------------|
| Absolute Maintenance | 5.00% |
| Absolute License | 11.00% |
| Acer Servers | 10.00% |
| Acer Notebooks | 3.00% |
| Acer Maintenance | 7.25% |
| Belkin Accessories | 45.00% |
| Belkin Rack Systems | 25.00% |
| Belkin Cases | 20.00% |
| Belkin Cables, Switches, and Power | 28.00% |
| Bluebeam License | 3.75% |
| Bluebeam Maintenance and Support | 0.75% |
| Bretford Carts and Accessories | 36.75% |
| Brother Laser, MFC, Inkjet, Label (Mono, Color) | 39.75% |
| Brother Scanners | 19.25% |
| Brother Services and Maintenance | 7.75% |
| Casio Calculators | 9.25% |
| Casio Workbooks & Accessories | 10.00% |
| Corel Government Licenses | 28.75% |
| Corel Academic Licenses | 70.75% |
| Corel Roxio | 10.75% |
| Corel Winzip | 10.75% |
| Embarcadero Licenses | 5.00% |
| Ergotron Stands, Mounting Kits, and Accessories | 19.25% |
| Ergotron Carts | 19.25% |
| Ergotron Maintenance/ Installation | 3.00% |
| Filemaker Software and Licenses | 8.00% |
| Fluxx Labs, Inc. | 3.00% |
| Fujitsu All | 15.50% |
| Good Technology Hardware and Software | 10.00% |
| Juniper Software, maintenance, renewals, service | 7.25% |
| Kensington All | 34.25% |
| Kingston All | 25.00% |
| Landesk Software, Licenses, and Maintenance | 17.75% |

| Brand | DIR Customer Discount % off MSRP * |
|---|---------------------------------------|
| Logitech Input Devices, cameras, Camcorders | 20.75% |
| Logitech Cases, Mousepads, others | 10.75% |
| Microstrategy Software and Licenses | 5.75% |
| MobileIron Renewals, Warranties, Service | 2.75% |
| MobileIron Software | 20.75% |
| NEC Displays | 12.75% |
| NEC Projectors and Supplies | 18.75% |
| NEC Other | 10.75% |
| Neverwear Software and Licenses | 2.75% |
| Paessler Software Solutions Software and Licenses | 13.75% |
| Pitney Bowes Software | 2.75% |
| Proofpoint All | 13.00% |
| Quantum Hardware | 20.75% |
| Red Hat Software and Licenses | 15.75% |
| Solarwinds Software and Licenses | 15.75% |
| Symantec Training, Proactive & Professional Services | 4.75% |
| Symantec Subscription Products, (including CASB, CDP, DigiCert Website Security and Related PKI Solutions) | 9.75% |
| Symantec Hardware ATP and SMG Appliances | 9.75% |
| Symantec Maintenance/Support (except Symantec Endpoint Protection) | 11.00% |
| Symantec Hosted Software | 11.00% |
| Symantec Hardware Appliances, (except ATP and SMG Appliances) | 16.00% |
| Symantec Cloud Services | 4.75% |
| Symantec Endpoint Protection: Products and Maintenance/Support | 26.00% |
| Symantec Cacheflow: Products and Maintenance/Support | 26.00% |
| Symantec Maintenance & Renewals for Security & Privacy, Device Security, Mobile Management, IT Lifecycle Management | 9.75% |
| Symantec Technical Services, Implementation, Training, Business Critical Support Services | 4.75% |
| Symantec Licenses for Security & Privacy, Security, Mobile Management, IT Lifecycle Management, | 9.75% |
| Techsmith Software and Licenses | 13.00% |
| Unitrends Licenses and Maintenance | 7.00% |
| VanDyke Software Software, Licenses, and Maintenance | 10.25% |
| WhereScape | 15.00% |
| WhereScape Annual Software Maintenance | 20% of software purchase price |

***Important Note: Vendors quote to DIR customers shall include the DIR administrative fee. The fee will be added after discount off MSRP is applied.**

**APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3480
PROOFPOINT SECURITY PRODUCTS EXHIBIT**

| | |
|--|--|
| <p>This Security Products Exhibit (“Exhibit”) is an exhibit to the General Terms and Conditions (“General Terms”). The General Terms are an integral part of this Exhibit and are incorporated by reference, if any of the following Proofpoint Products are licensed by Customer: Cloud Account Defense (CAD), Cloudmark Authority, Cloudmark Safe Messaging Cloud (SMC), Cloudmark Security Platform, and Cloudmark Spam Reporting Service (SRS), Continuity, Data Discover, Domain Discover, Email Data Loss Prevention (DLP), Email Encryption, Email Brand Defense, Email Fraud Defense, Email Protection, Emerging Threats Intelligence Query, Emerging Threats Pro Ruleset, Emerging Threats Reputation, Internal Mail Defense (IMD), Mail Routing Agent (MRA), PhishAlarm, PhishAlarm Analyzer, Cloud App Security Broker (CASB), Secure Share, Targeted Attack Protection (TAP), TAP Isolation – Personal Browsing Defense, TAP Isolation – Personal Webmail Defense, Threat Response, Threat Response Auto Pull, ThreatSim and Wombat Security Training Modules, and any future names or bundles by which Proofpoint identifies and makes available these Products. Capitalized terms used in this Exhibit without separate definition shall have the meaning specified in the General Terms.</p> <p>IN WITNESS WHEREOF, Proofpoint and Customer represent and warrant to the other that the person entering into this Exhibit is authorized to sign this Agreement on behalf of their respective party.</p> | |
| CUSTOMER: | PROOFPOINT, INC.: |
| <i>Signature:</i> | <i>Signature:</i> |
| Individual Signing: [print name] | Individual Signing: [print name] |
| Title: | Title: |
| Signing Date: | Signing Date: |

1. TERMS OF USE. Proofpoint shall make the Proofpoint Product available to Customer and its Affiliates in accordance with DIR Contract No. DIR-TSO-3480, the General Terms, Purchase Order, this Exhibit and the Documentation. Customer’s right to use the Proofpoint Product is limited to the maximum number of Licenses for each module, the deployment type (Appliance, Software, or Service (SaaS)), and any other limitations specified in this Exhibit, including Schedule 1, and each Purchase Order and/or Quote.

2. WARRANTIES.

2.1 Appliance Warranty. Proofpoint warrants to Customer that the physical Appliance will be free from defects in materials and workmanship, under normal intended use, for the period and under the terms described at <https://www.proofpoint.com/us/support/email-appliance-warranty-eol> (“**Appliance Warranty**”). Customer will provide prompt written notice of any non-conformity during the Appliance Warranty period. Provided that Proofpoint receives such timely notification, Customer’s sole and exclusive remedy and Proofpoint’s entire liability for any breach of the foregoing warranty is to ship a replacement Appliance. If the Appliance is replaced, such replacement Appliance is warranted for the unexpired portion of the original Appliance Warranty. If the Appliance is damaged due to Customer’s negligence or willful misconduct, Customer will be responsible for all shipping and repair costs. Otherwise, Proofpoint will be responsible for all shipping costs related to shipping the replacement Appliance to Customer. Any Appliance that is replaced becomes the property of Proofpoint. Proofpoint will not be responsible for Customer’s or any third party’s software, firmware, information, or data contained in or stored on any Appliance returned to Proofpoint, whether under warranty or not. This Appliance Warranty does not apply to (a) an Appliance that is improperly installed or used in a manner other than as authorized under the Agreement, to the extent such improper installation or use cause the breach of warranty; (b) an Appliance that has been modified or repaired by Customer or any party other than Proofpoint, to the extent such modifications cause the breach of warranty; (c) an Appliance that is damaged due to Customer’s mishandling, abuse, negligence, or improper storage, servicing or operation; or (d) an Appliance that is damaged due to power failures, surges, lightning strikes, fire, flood, accident, and actions of third parties or other events outside Proofpoint’s reasonable control.

2.2 SaaS Warranty. Proofpoint warrants that the Services will substantially conform in all material respects in accordance with the Services Documentation (“**SaaS Warranty**”). Customer will provide prompt written notice of any non-conformity. Proofpoint may modify the Services Documentation in its sole discretion, provided the functionality of the Services will not be materially decreased during the Term. As Customer’s sole and exclusive remedy and Proofpoint’s entire liability for any breach of the SaaS Warranty, Proofpoint will (a) use reasonable efforts to fix, provide a work around, or otherwise repair or replace the Service or, if Proofpoint is unable to do so, (b) terminate this Exhibit and return the Subscription Fees paid to Proofpoint or

Reseller for such allegedly defective Services for the period commencing from Customer's notice of nonconformity through the remainder of the Initial Term or Extension Term, as applicable.

2.3 Software Warranty. Proofpoint warrants that for a period of three (3) months following delivery of the Software to Customer it will function in substantial conformance in all material respects with the Documentation ("**Software Warranty**"). Proofpoint may modify the Documentation in its sole discretion, provided the functionality of the Software will not be materially decreased during the Term. Customer will provide prompt written notice of any non-conformity. The Software Warranty does not apply to: (a) Software that has been modified by any party other than Proofpoint; or (b) Software that has been improperly installed or used in a manner other than as authorized under the Agreement to the extent such modification(s) or improper installation cause the Software to be nonconforming. As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the foregoing warranty, Proofpoint will (x) use reasonable efforts to fix, provide a work around, or otherwise repair or replace the Software or, if Proofpoint is unable to do so, (y) terminate this Exhibit and return the Subscription Fees paid to Proofpoint or Reseller for such allegedly defective Software for the period commencing from Customer's notice of nonconformity through the remainder of the Initial Term or Extension Term, as applicable. If the non-conforming Software was included with an Appliance and if, in the parties' reasonable judgment, the functionality or utility of the physical Appliance is materially impacted as a result of Proofpoint's termination of Customer's right to use the non-conforming Software under this Section 2.3, Customer may return the physical Appliance in accordance with the return provisions specified in Section 2.1 and Proofpoint will refund the fees paid to Proofpoint for such physical Appliance. If Customer has purchased the physical Appliance through a Reseller, then Reseller shall refund the foregoing fees to Customer.

2.4 Disclaimer. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF THE INTENDED EMAIL BLOCKING OF ANY MAIL MESSAGE, THAT THE PROOFPOINT PRODUCTS (SOFTWARE, APPLIANCE, OR SERVICE) WILL MEET CUSTOMER'S REQUIREMENTS OR THAT EMAIL WILL NOT BE LOST OR THAT THE PROOFPOINT PRODUCTS WILL NOT GIVE FALSE POSITIVE OR FALSE NEGATIVE RESULTS OR THAT ALL SPAM AND VIRUSES WILL BE ELIMINATED OR THAT LEGITIMATE MESSAGES WILL NOT BE OCCASIONALLY QUARANTINED AS SPAM. PROOFPOINT DOES NOT WARRANT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL SOFTWARE ERRORS WILL BE CORRECTED.

3. APPLIANCE SHIPMENT, DELIVERY, TITLE, RISK OF LOSS. Proofpoint will ship the physical Appliance Ex Works (Proofpoint's facility), as defined by Incoterms 2010. Unless specified in advance by Customer, Proofpoint will select the carrier in its own discretion. Shipping shall be handled in accordance with Appendix A, Section 8D of DIR Contract No. DIR-TSO-3480. Any Software Updates shall be delivered via file transfer protocol unless physical shipment (e.g. compact disk) is specifically requested by Customer.

4. SERVICE LEVEL AGREEMENT. Proofpoint provides a Service Level Agreement ("SLA") for some of the Proofpoint Services. The SLA is posted on Proofpoint's website at <http://www.proofpoint.com/license>. In the event of a breach of the foregoing warranty, as Customer's sole and exclusive remedy, Proofpoint will provide the remedy set forth in the respective SLA. Any term found to be in conflict with DIR Contract No. DIR-TSO-3480 will be null and void.

5. PROOFPOINT'S LICENSE.

5.1 During the Term of the Agreement Customer hereby grants to Proofpoint and its service providers a worldwide, limited term license to collect and process certain Customer Confidential Information, Customer Data and Personal Data for: (a) abuse and threat awareness, detection and prevention, (b) compliance, and (c) security purposes; in accordance with the Agreement. Proofpoint will not sell any Customer Confidential Information, Customer Data, or Personal Data to third parties for marketing purposes.

5.2 Customer acknowledges and agrees that development of Threat Analytics from Proofpoint's ecosystem is critical to the functionality of the Proofpoint Products. Customer hereby grants a worldwide license to Proofpoint to collect Threat Analytics during the Term of the Agreement. Further, Customer hereby grants a worldwide license to Proofpoint to use Threat Analytics to maintain, improve and enhance Proofpoint services; provided that if Customer provides written legal notice to Proofpoint on or after expiration or termination of the applicable Proofpoint Services instructing Proofpoint to delete any Personal Data included in Threat Analytics it will be deleted within 18 months of such notice. This Section 5.2 survives termination and expiration of the Agreement. "**Threat Analytics**" means information collected, generated and/or analyzed by the Proofpoint Products such as log files, statistics, aggregated data and derivatives thereof. "**Customer Data**" means the Customer specific configurations and rules implemented in the Proofpoint Products, and any Customer content processed by the Proofpoint Products (e.g. email text and attachments) that is not Personal Data. "**Personal Data**" means data about an identifiable individual that is protected by privacy laws where the individual resides. Examples of personal data include name, religion, gender, financial information, national identifier numbers, health information, email addresses, IP addresses, online identifiers and location data.

**SCHEDULE 1
PRODUCT SPECIFIC TERMS**

Cloudmark Products. Cloudmark Products include Cloudmark Authority, Cloudmark Safe Messaging Cloud (SMC), and Cloudmark Spam Reporting Service (SRS). Notwithstanding anything to the contrary in the General Terms and Conditions, the parties hereby agree that Work Product resulting from Technical Services for Cloudmark Products includes Customer configurations. Proofpoint grants to Customer a license to such Work Product (including Customer configurations) pursuant to Section 5.1 of the General Terms and Conditions. Additionally, Customer acknowledges that use of the "Cloudmark Network Feedback System" involves sending unencrypted Customer e-mail and spam samples into this system. This process is optional for the Customer and only occurs for an email message when a User chooses to click on the "This is Spam" button or the "This is NOT spam" button for a given email message. Proofpoint analyses these spam reports and unblock reports in order to increase the accuracy of the Proofpoint Product.

Continuity. Continuity is licensed on a User basis. Customer acknowledges that Continuity is only to serve as a secondary, emergency failover option in the event of failure of Customer's email service, and not to serve as a primary email archive solution or a primary failover solution. Customer is required to have a current subscription for Proofpoint email protection to use Continuity. Customer is responsible for: (i) all activities conducted under its User logins; and (ii) obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use Continuity and ensuring that the Customer Equipment and any ancillary services are compatible with Continuity and comply with all configuration requirements set forth in Continuity's Documentation; and (iii) supporting and resolving any password reset issues for Continuity for Customer's Users. Customer is solely responsible for any damage or loss to a third party resulting from the Customer's own use of the Proofpoint Product in violation of: (a) applicable law; or (b) the terms and conditions of the Agreement.

Continuity Plus. Continuity Plus is licensed on a User basis Customer must: (i) enable the email journaling feature within Customer's Microsoft Exchange Server, or Microsoft Office 365 service; and (ii) ensure that the Customer's network has proper policies to allow journaling emails to be transmitted to the Proofpoint hostnames and IP addresses for Continuity Plus. This feature for emergency storage of outbound and intra-domain email is only supported for select versions of Microsoft Exchange Server and Microsoft Office 365. Customer is solely responsible for any damage or loss to a third party resulting from the Customer's own use of the Proofpoint Product in violation of: (a) applicable law; or (b) the terms and conditions of the Agreement.

Domain Discover. Customer is responsible for (i) all activities conducted under its User logins; (ii) obtaining and maintaining any necessary equipment and configurations set forth in the Documentation; and (iii) complying with all applicable laws, rules and regulations, and acquiring all necessary data subject consents. Customer is responsible for maintaining the user accounts and the security of its user names and passwords at the user level and for promptly changing or deleting any user name or password that Customer believes may have been compromised. Proofpoint reserves the right to institute password requirements (such as the length of password or the required use of numbers, symbols etc.) and to refuse registration of, or cancel passwords it deems inappropriate. The Proofpoint Products may allow Customer to interface with a variety of third party software or services (e.g., Facebook, Twitter, LinkedIn). No endorsement of any such service should be inferred as a result of any integration with the Proofpoint Products and Proofpoint is not responsible for the data, operation or functionality of such third-party services. While Proofpoint may, in its sole discretion, customize the Proofpoint Products to interoperate with various third-party services: (a) Customer is responsible for complying with the terms and policies of each such third-party service including, without limitation, any payment obligations related thereto; and (b) Proofpoint cannot guarantee that such third-party services will continue to interoperate with the Service.

Email Protection. Email Protection is licensed on a User basis. When using Email Protection Customer is responsible for all activities conducted under its user logins. Email Protection is for use with normal business messaging traffic only, and Customer shall not use Email Protection for the machine generated message delivery of bulk or unsolicited emails or emails sent from an account not assigned to an individual. Customer is responsible for maintaining the outbound email filtering Email Protection configuration settings to block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher. If Proofpoint has reason to believe that Customer has modified the outbound email configuration setting, Proofpoint reserves the right to monitor and reset such settings. Customer is solely responsible for any damage or loss to a third party resulting from the Customer's own use of the Proofpoint Product in violation of: (a) applicable law; or (b) the terms and conditions of the Agreement. Each User must be assigned a separate account on Customer's email server for sending or receiving messages or data within Customer's email system or network.

Mail Routing Agent. Customer is responsible for maintaining the outbound email filtering MRA configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of 95 or higher. If Proofpoint has reason to believe that Customer has modified the outbound email configuration setting, Proofpoint reserves the right to monitor and reset such settings.

PhishAlarm & PhishAlarm Analyzer. PhishAlarm & PhishAlarm Analyzer do not filter, scan, analyze or determine if any email received by any User of the PhishAlarm Software is a phishing attack. Other Proofpoint Products provide these functions. "User" means Customer's and its Affiliates' employees, agents, contractors, consultants or other individuals licensed to use the Proofpoint Product.

Targeted Attack Protection (TAP). TAP is licensed on a User basis. Customer is solely responsible for any damage or loss to a third party resulting from the Customer's own use of the Proofpoint Product in violation of: (a) applicable law; or (b) the terms and conditions of the Agreement.

Threat Response. Threat Response is licensed on a User basis and interoperates with certain supported: (i) third-party data sources ("*Event Source*"); and (ii) third-party security enforcement platforms (e.g. firewalls, and web proxy servers) ("*Enforcement Device*"). As between Proofpoint and Customer, Proofpoint shall have no liability whatsoever with respect to the accuracy, availability, or quality of Event Sources or Enforcement Devices. Customer may configure additional Event Sources and Enforcement Devices as needed by Customer in connection to Customer's use of Threat Response. Customer is solely responsible for any damage or loss to a third party resulting from the Customer's own use of the Proofpoint Product in violation of: (a) applicable law; or (b) the terms and conditions of the Agreement.

Threat Response Auto Pull. Threat Response Auto Pull is licensed on a User basis and may only be integrated with either Microsoft Exchange Server, Microsoft Office 365, Google Gmail or IBM Domino as an Enforcement Device and can only be used with the following data Event Sources: Proofpoint TAP, FireEye EX, Proofpoint Smart Search results, Splunk (events for email quarantine only) and JSON (events for email quarantine only). Upon written notice (via email) to Customer's Named Support Contact from Proofpoint, Customer will send a copy of its specific TRAP system configuration to Proofpoint for review. Customer is solely responsible for any damage or loss to a third party resulting from the Customer's own use of the Proofpoint Product in violation of: (a) applicable law; or (b) the terms and conditions of the Agreement.

ThreatSim. Customer may only conduct simulated phishing emails to domains owned by the Customer as set forth in the Purchase Order. Customer may include in the simulated phishing emails logos, customer names, e-mail addresses of Users and any other identifying information ("Customer Information"). Customer represents and warrants that it has the right to distribute, reproduce, publish, upload, use the Customer Information.

TAP Isolation – Personal Browsing Defense & Personal Webmail Defense. Personal Browsing Defense and Personal Webmail Defense are both licensed on a User basis. Customer will not use either TAP Isolation product to monitor any User's internet activities and will not allow Users to transmit through or post on either TAP Isolation product infringing, defamatory, threatening or offensive material.

Wombat Security Training Modules. Wombat Security Training Modules enable Customer to send security awareness training to Users to teach Users secure behavior. On-premise versions of the Training Modules can also be provided. Training Modules are compatible with single SCO SCORM 1.2 and 2004 compliant Learning Management Systems, controlled by the Customer.



**APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3480
GENERAL TERMS AND CONDITIONS**

| | |
|--|---|
| <p>These General Terms and Conditions ("General Terms") are made as of _____ ("Effective Date") between Proofpoint, Inc., a Delaware corporation, with offices at 892 Ross Drive, Sunnyvale, CA 94089 USA ("Proofpoint") and _____ with offices at _____ ("Customer").</p> <p>The purpose of the General Terms is to create a mechanism under which Customer may purchase Proofpoint Products. In addition to DIR Contract No. DIR-TSO-3480 and the General Terms, Customer's purchase and use of Proofpoint Products shall also be subject to the Proofpoint Product Exhibit for each Proofpoint Product purchased by Customer in the form as mutually agreed and executed by Customer and Proofpoint (each, a "Product Exhibit"). In the event of any conflict between the DIR Contract No. DIR-TSO-3480, General Terms, each Product Exhibit and Order Forms (as defined below), the order of precedence will be the following: DIR Contract No. DIR-TSO-3480, the applicable Product Exhibit(s), these General Terms, and then the applicable Order Form(s).;</p> <p>BY SIGNING BELOW, CUSTOMER AGREES THAT DIR CONTRACT NO. DIR-TSO-3480 AND THIS AGREEMENT (AS DEFINED BELOW) IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PROPOSALS OR PRIOR OR CONTEMPORANEOUS AGREEMENTS, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO, ANY TERMS CONTAINED IN CUSTOMER'S PURCHASE ORDER.</p> | |
| CUSTOMER: | PROOFPOINT, INC.: |
| Individual Signing: [print name] | Individual Signing: [print name] |
| Signature: | Signature: |
| Title: | Title: |
| Signing Date: | Signing Date: |
| CUSTOMER ADDRESS FOR NOTIFICATIONS: | PROOFPOINT, INC. ADDRESS FOR NOTIFICATIONS: 892 Ross Drive Sunnyvale, CA 94089 USA Attn: General Counsel |

1. DEFINITIONS. In the General Terms:

1.1 "Affiliate" means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party. "Control," for purposes of this definition, means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

1.2 "Agreement" means DIR Contract No. DIR-TSO-3480, the General Terms, each Product Exhibit, each SOW (if any) and any other document executed by the parties.

1.3 "Appliance(s)" means a virtual or hardware device containing the Software.

1.4 "Confidential Information" has the meaning set forth in Section 3.

1.5 "Documentation" means the description of the Proofpoint Product(s) contained in the then current Proofpoint Product descriptions provided by Proofpoint to Customer upon purchase or license of the Proofpoint Product(s), and the user manuals relating to the use of the Proofpoint Products that are either provided on-line at the time of Customer's purchase of the Proofpoint Product, embedded in the Proofpoint Product(s) or delivered with the Proofpoint Product.

1.6 "Extension Term" means each additional one year subscription term for which the subscription term for a Proofpoint Product is extended pursuant to Section 7.

1.7 "Initial Term" means the initial subscription term for a Proofpoint Product that is defined on the applicable Order Form.

1.8 "Mailbox" means a separate account on Customer's e-mail server for sending or receiving messages or data within Customer's e-mail system or network. Aliases and distribution lists shall not be counted as separate mailboxes provided each person who has access to such aliases and distribution lists has a separate account on Customer's email server for the receipt of messages or data within Customer's e-mail system or network.

1.9 "Order Form" means an ordering document for a Proofpoint Product and may take the form of a purchase order issued by Customer or Reseller. Each Order Form shall reference DIR Contract No. DIR-TSO-3480 and this Agreement and will be subject to DIR Contract No. DIR-TSO-3480, each applicable Product Exhibit and these General Terms.

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1.10 "Technical Services" means installation, implementation, data migration or other services provided by Proofpoint to Customer.

1.11 "Proofpoint Products" means the Appliance, Service or Software licensed and/or purchased by Customer under an Order Form.

1.12 "Reseller" means a third-party authorized by Proofpoint to resell Proofpoint Products directly to Customer.

1.13 "Service" means any Proofpoint Product licensed on a hosted basis as software as a service.

1.14 "Software" means any Proofpoint binary software programs licensed by Proofpoint to Customer, together with all the Software Updates.

1.15 "Software Updates" means all Software updates and enhancements that Proofpoint generally makes available at no additional charge to its customers who are current in payment of applicable Subscription Fees or otherwise provides to Customer under this Agreement.

1.16 "SOW" means each statement of work, engagement letter or other writing signed by Proofpoint and Customer that describes the Technical Services provided by Proofpoint. Each SOW shall reference DIR Contract No. DIR-TSO-3480 and this Agreement and will be subject to the terms and conditions hereof.

1.17 "Subscription Fees" mean the fees paid by Customer for the right to use the applicable subscription based Proofpoint Products for the given Initial Term or Extension Term, as applicable.

1.18 "Taxes" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

1.19 "Term" means the Initial Term and any Extension Term applicable to each Order Form.

1.20 "Work Product" means all work product developed or created by Proofpoint during the course of providing support or Technical Services to Customer. Notwithstanding anything herein to the contrary, Work Product shall not include any Customer Data (as defined in the applicable Product Exhibit) or Customer Confidential Information.

2. GENERAL LICENSE TERMS

2.1 Subject to the terms of DIR Contract No. DIR-TSO-3480, these General Terms and each applicable Product Exhibit, Proofpoint grants to Customer and its Affiliates a royalty-free, non-exclusive, limited term, non-transferable (except to a successor in interest as permitted hereunder) license to use the Proofpoint Products purchased by Customer during the Term in accordance with the Documentation, in the quantities specified in the applicable Order Form, and solely for Customer's own internal business purposes. Customer may use the Documentation in connection with the license granted hereunder.

2.2 As between Customer and Proofpoint, Customer is responsible for all activities conducted by its users under its Mailbox accounts. Customer specifically agrees to limit the use of the Proofpoint Products to those parameters set forth in the applicable Order Form. Without limiting the foregoing, Customer specifically agrees not to: (i) resell, sublicense, lease, time-share or otherwise make a Proofpoint Product (including the Documentation) available to any third party; (ii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein; (iii) modify, copy or create derivative works based on a Proofpoint Product; (iv) decompile, disassemble, reverse engineer or otherwise attempt to derive source code from a Proofpoint Product, in whole or in part; (v) access a Proofpoint

Product for the purpose of building a competitive product or service or copying its features or user interface; (vi) use a Proofpoint Product, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer organization without Proofpoint's prior written consent; (b) infringement on the intellectual property rights of any third party or any rights of publicity or privacy; (c) violation of any law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, anti-discrimination, and/or false advertising); (d) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (e) filing copyright or patent applications that include the Software and/or Documentation or any portion thereof. Proofpoint Products are for use with normal business messaging traffic only, and Customer shall not use the Proofpoint Products for the machine generated message delivery of bulk or unsolicited emails or e-mails sent from an account not assigned to an individual.

3. CONFIDENTIALITY

3.1 To the extent allowable under the Texas Public Information Act, as used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as "confidential" or the like, or, that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure the Software, Customer Data, business and marketing plans, technology and technical information, product designs, and business processes.

3.2 "Confidential Information" shall not include information that (i) is or becomes a matter of public knowledge through no act or omission of the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure without restriction on disclosure; (iii) is lawfully disclosed to the Receiving Party by a third party that lawfully and rightfully possesses such information without restriction on disclosure; (iv) information that the Receiving Party can document resulted from its own research and development, independent of receipt of the disclosure from the Disclosing Party; or (v) is disclosed with the prior written approval of the Disclosing Party.

3.3 To the extent allowable under the Texas Public Information Act, receiving Party shall not (i) disclose any Confidential Information of the Disclosing Party to any third party, except as otherwise expressly permitted herein or (ii) use any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement or in any manner that would constitute a violation of any laws or regulations, including without limitation the export control laws of the United States, except with Disclosing Party's prior written consent. The Receiving Party shall not make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The Receiving Party agrees to hold the Disclosing Party's Confidential Information in confidence and to take all precautions to protect such Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like nature, but in no case shall the Receiving Party employ less than reasonable precautions. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information. This Agreement will not be

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construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required to by law or valid order of a court or other governmental authority; provided, however, to the extent permitted by law, the responding party shall give prompt written notice to the other party to enable the other party to seek a protective order or otherwise prevent or restrict such disclosure and, if disclosed, the scope of such disclosure is limited to the extent possible.

3.4 Subject to record retention laws and policies, the Receiving Party will return all copies of the Disclosing Party's Confidential Information upon the earlier of (i) the Disclosing Party's request, or (ii) the termination or expiration of this Agreement. Instead of returning such Confidential Information, the Receiving Party may destroy all copies of such Confidential Information in its possession; provided, however, the Receiving Party may retain a copy of any Confidential Information disclosed to it solely for archival purposes, provided that such copy is retained in secure storage and held in the strictest confidence for so long as the Confidential Information remains in the possession of the Receiving Party.

3.5 The parties acknowledge and agree that the confidentiality obligations set forth in this Agreement are reasonable and necessary for the protection of the parties' business interests, that irreparable injury may result if they are breached, and that in the event of any actual or potential breach of Section 3, that the non-breaching party may have no adequate remedy at law and shall be entitled to seek injunctive and/or other equitable relief as may be deemed proper by a court of competent jurisdiction.

4. OWNERSHIP

4.1 As between the parties, Proofpoint retains all title, intellectual property and other ownership rights throughout the world in and to the Proofpoint Products, Documentation, any Service offering and the Work Product. Proofpoint hereby grants to Customer a non-exclusive, non-transferable, fully paid up, perpetual license to use the Work Product in accordance with this Agreement and solely for Customer's internal business purposes. Customer retains all title, intellectual property and other ownership rights in all Customer Data, Customer Confidential Information and all data, text, files, output, programs, information, or other information and material that Customer provides, develops, or makes available or uses in conjunction with any Service offering.

4.2 Customer's rights to use the Proofpoint Products (including the Documentation) shall be limited to those expressly granted in this Agreement and any applicable Product Exhibit. Customer is not authorized to use (and shall not permit any third party to use) the Proofpoint Products (including the Documentation) or any portion thereof except as expressly authorized by this Agreement or the applicable Order Form. There are no implied rights and all other rights not expressly granted herein are reserved. No license, right or interest in any Proofpoint trademark, copyright, trade name or service mark is granted hereunder. Customer shall not remove from any full or partial copies made by Customer of the Software, Software Updates and Documentation any copyright or other proprietary notice contained in or on the original, as delivered to Customer. If Customer sells, leases, lends, rents, transfers or otherwise distributes an Appliance to a third party, Customer will ensure that it erases all copies of the Software from such Appliance.

4.3 Each party acknowledges that the Proofpoint Products contain valuable trade secrets and proprietary information of Proofpoint, that in the event of any actual or threatened breach of the scope of any of the licenses granted hereunder, such breach shall constitute immediate, irreparable

harm to Proofpoint for which monetary damages would be an inadequate remedy.

5. FEES, PAYMENT AND REPORTING

5.1 a) Initial Fees. Fees for the Proofpoint Products will be the Subscription Fees and other fees set forth in the Order Forms (collective, the "Fees") and as indicated in Appendix C of DIR Contract No. DIR-TSO-3480. No refunds will be made except as provided for under any warranties for the applicable Proofpoint Product. Taxes shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3480. In no event will either party be responsible for any taxes levied against the other party's net income.

b) Renewal Fees. Upon expiration of the Initial Term applicable to an Order Form, the subscription term may be renewed for an Extension Term in accordance with Section 7.4. The Fees stated in each Order Form shall be effective during the Initial Term specified in that Order Form and the Subscription Fees and other fees for each Extension Term shall be defined in the applicable Order Form, or in the absence of any such terms regarding Fees for Extension Terms, by mutual agreement of the parties and as indicated in Appendix C of DIR Contract No. DIR-TSO-3480.

5.2 Payment. Unless otherwise agreed between Customer and Reseller, all Fees due under an Order Form shall be due and payable in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3480. Except as otherwise expressly permitted herein, all Fees owed pursuant to an Order Form are non-cancellable and non-refundable for the Term. Failure to make timely payment may result in immediate termination of access to the Proofpoint Products. Upon default by Customer, Proofpoint will have all remedies available at law or in equity.

5.3 Reporting. Customer shall audit its actual usage of the subscription based Proofpoint Products based on Mailbox count ("Mailbox Count") and inform Proofpoint by email at accountsreceivable@proofpoint.com of the Mailbox Count upon the occurrence of the following events: (i) on or before any material increase in the Mailbox Count (where such material increase shall be equal or greater than ten percent (10%) of the then current licensed Mailbox Count) and (ii) on the thirtieth (30th) day preceding each anniversary of the Effective Date. Proofpoint may also itself at any time produce a count of the actual Mailbox Count for verification by Customer. If such number exceeds the Mailbox Count for which Customer has paid Subscription Fees ("Base Mailbox Count") by more than five percent (5%), then Customer shall pay Proofpoint for each Mailbox beyond the Base Mailbox Count from the time such Mailbox was activated through the remainder of the Initial Term or Extension Term, as applicable. If such number exceeds the Base Mailbox Count by five percent (5%) or less, then Customer shall pay Proofpoint for each Mailbox beyond the Base Mailbox Count from the reporting date of the Mailbox Count through the remainder of the Initial Term or Extension Term, as applicable.

6. SUPPORT AND TECHNICAL SERVICES

6.1 Proofpoint shall provide support provided Customer is current in payment of the applicable Fees and any additional fees for platinum or premium support, if applicable. Proofpoint's current support terms are described on Proofpoint's website at <http://www.proofpoint.com/license>. Any term found to be in conflict with DIR Contract No. DIR-TSO- 3480 shall be deemed null and void.

6.2 Proofpoint shall provide the Technical Services, if any, specified in one or more SOWs. All Technical Services shall be billed as stated in the applicable SOW and Customer agrees that if Customer has not used the Technical Services

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within one (1) year of paying for such Technical Services, Proofpoint has no further obligations and Customer shall not be entitled to a refund except as set forth expressly in the applicable SOW.

6.3 Proofpoint warrants it will provide Technical Services in a professional and workmanlike manner consistent with good industry standards and practices. As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the foregoing warranty, Proofpoint will, (i) use reasonable efforts to provide a work around, or otherwise re-perform the Technical Services or, if Proofpoint is unable to do so, (ii) terminate the applicable SOW and refund that portion of any Fees paid to Proofpoint or Reseller that correspond to the allegedly defective Technical Services.

7. TERMINATION AND EXPIRATION

7.1 Terminations will be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3480.

7.3 On termination or expiration of the General Terms, all Software and Service licenses granted under all Order Forms shall automatically terminate with immediate effect, provided the license granted pursuant to Section 4.1 for Customer to use the Work Product for Customer's internal business purposes shall remain in full force and effect.

7.4 Unless otherwise set forth in the applicable Product Exhibit or Order Form, the Initial Term applicable to each Order Form commences on the date Customer executes such Order Form and the Initial Term applicable to follow-on orders under such Order Form commences on the date Proofpoint receives such order. Upon expiration of the Initial Term under each Order Form the subscription term applicable to such Order Form will have three (3) one (1) year renewal options exercised by the Customer providing Vendor thirty days written notice prior to the then-expiration date.

7.5 In the event of the termination or expiration of this Agreement, the provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement, including but not limited to sections 2.2, "License Restrictions"; 3, "Confidentiality"; 4, "Ownership"; 5 "Fees, Payment and Reporting"; 7, "Termination and Expiration"; 10, "Limitation of Liability"; and 11, "General Provisions", as well as any accrued rights to payment shall remain in effect beyond such termination or expiration until fulfilled.

8. INTELLECTUAL PROPERTY INDEMNITY

Intellectual Property shall be handled in accordance with Appendix A, Section 5 of DIR Contract No. DIR-TSO-3480.

9. WARRANTIES, REMEDIES AND DISCLAIMERS

9.1 Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it shall comply with all other applicable laws in its performance hereunder.

9.2 Warranties specific to each Proofpoint Product shall be set forth in an applicable Product Exhibit, executed by both parties.

9.3 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE AND IN EACH PRODUCT EXHIBIT, PROOFPOINT AND PROOFPOINT LICENSORS DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WITHOUT LIMITATION REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF

THE INTENDED EMAIL BLOCKING OF ANY MAIL MESSAGE, THE PROOFPOINT PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT NO EMAIL WILL BE LOST OR THAT THE PROOFPOINT PRODUCTS WILL NOT GIVE FALSE POSITIVE OR FALSE NEGATIVE RESULTS OR THAT ALL SPAM AND VIRUSES WILL BE ELIMINATED OR THAT LEGITIMATE MESSAGES WILL NOT BE OCCASIONALLY QUARANTINED AS SPAM. PROOFPOINT DOES NOT WARRANT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER.

10. LIMITATION OF LIABILITY & INDEMNIFICATION

10.1 LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10K OF DIR CONTRACT NO. DIR-TSO-3480. Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-3480.

11. GENERAL

11.1 Government End-User Notice. This Section shall apply only if Customer is a federal government entity. Proofpoint provides the Proofpoint Products, including related technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

11.2 Publicity. Neither party may issue press releases or otherwise publicize the parties' relationship without the other party's prior written consent, which shall not be unreasonably withheld.

11.3 Independent Contractors; Relationship with Third Parties. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

11.4 Notices. Notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3480 All notices shall be in writing to each party's address on the signature page of this Agreement and effective upon receipt.

11.5 Entire Agreement; Integration. DIR Contract No. DIR-TSO-3480 and this Agreement constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, any Order Form issued by Customer or Reseller shall be deemed a convenient order and payment device only and no terms stated in any Order Form or

Exhibit B

in any other order document shall be incorporated into this Agreement, and all such terms shall be void and of no effect.

11.6 Waiver. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect. The parties' rights and remedies under this Agreement are cumulative.

11.7 Force Majeure. Force Majeure will be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3480.

11.8 Assignment. Assignments will be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-3480.

11.9 Export Restrictions. Each party agrees to comply with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Proofpoint Products and Proofpoint Confidential Information and any media, to assure that the Proofpoint Products, Proofpoint Confidential Information and media are not exported, imported or used in violation of law or applicable regulation.

11.10 Applicable Law. This Agreement will be governed by the laws of the State of Texas without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties hereby consent to the exclusive jurisdiction of the state courts located in Travis County, Texas, for resolution of any disputes arising out of this Agreement.

11.11 Counterparts. These General Terms and each Product Exhibit may be executed by facsimile and in counterparts.

11.12 Headings; Language. All headings used herein are for convenience of reference only and will not in any way affect the interpretation hereof. The English language version of this Agreement controls. It is the express wish of both parties that this Agreement, and any associated documentation, be written and signed in English.



EXHIBIT TO DIR CONTRACT NO. DIR-TSO-3480

SECURITY SERVICES EXHIBIT

| | |
|---|--|
| <p>This Security Services Exhibit is an exhibit to the General Terms and Conditions ("General Terms"). The General Terms are an integral part of this Security Services Exhibit and are incorporated by reference.</p> <p>IN WITNESS WHEREOF, Proofpoint and Customer represent and warrant to the other that the person entering into this Security Services Exhibit is authorized to sign this Agreement on behalf of their respective party.</p> | |
| CUSTOMER: | PROOFPOINT, INC.: |
| Individual Signing: [print name] | Individual Signing: [print name] |
| Signature: | Signature: |
| Title: | Title: |
| Signing Date: | Signing Date: |

CONTINUED ON NEXT PAGE

Exhibit B

1. DEFINITIONS. For purposes of this Security Services Exhibit the following definitions shall apply. Capitalized terms used in this Security Services Exhibit without separate definition shall have the meaning specified in the General Terms.

1.1 "Customer Data" means the rules and policies set by Customer in its use of the Security Services and the Customer e-mail and associated content managed by the Security Services.

1.2 "Customer Equipment" means Customer's computer hardware, software and network infrastructure used to access the Security Services.

1.3 "Security Service(s)" means the filtering and processing of email within the on-demand, Web-based email security and data loss prevention services provided by Proofpoint, including updates thereto.

1.4 "Users" means Customer's and its Affiliates' employees, agents, contractors, consultants or other individuals who are authorized by Customer to use the Security Services.

2. TERMS OF SECURITY SERVICES. Proofpoint shall make the Security Services available to Customer and its Affiliates in accordance with DIR Contract No. DIR-TSO-3480 and the General Terms, Order Form, this Security Services Exhibit and the Security Services Documentation. Customer's right to use the Security Services is limited to the maximum number of Mailboxes for each module specified in each Order Form.

3. CUSTOMER RESPONSIBILITIES. Customer is responsible for (i) all activities conducted under its User logins; (ii) obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use the Security Service and ensuring that the Customer Equipment and any ancillary services are compatible with the Security Service and comply with all configuration requirements set forth in the Security Services Documentation; and (iii) complying with all laws, rules and regulations regarding the management and administration of its electronic messaging system, including but not limited to, obtaining any required consents and/or acknowledgements from its Users and service providers (if applicable) in managing its electronic messaging system. If Customer has elected to route outbound email through the Security Services, Customer is responsible for maintaining the outbound email filtering Security Services configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher. If Proofpoint has reason to believe that Customer has modified the outbound email configuration setting, Proofpoint reserves the right to monitor and reset such settings.

4. WARRANTIES.

4.1 Proofpoint warrants that the Security Service will substantially conform in all material respects in accordance with the Security Services Documentation. Customer will provide prompt written notice of any non-conformity. Proofpoint may modify the Security Service Documentation in its sole discretion, provided the functionality of the Security Service will not be materially decreased during the Term. As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the foregoing warranty, Proofpoint will (i) use reasonable efforts to fix, provide a work around, or otherwise repair or replace the Security Service or, if Proofpoint is unable to do so, (ii) terminate this Security Services Exhibit and return

he Subscription Fees paid to Proofpoint or Reseller for such allegedly defective Security Services for the period commencing from Customer's notice of nonconformity through the remainder of the Initial Term or Extension Term, as applicable.

4.2 Proofpoint warrants that the Security Services will meet the requirements set forth in the Security Service Level Agreements (each, an "SLA"), as described on Proofpoint's website at <http://www.proofpoint.com/license>. Any term in conflict with DIR Contract No. DIR-TSO-3480 shall be deemed null and void. In the event of a breach of the foregoing warranty, as Customer's sole and exclusive remedy, Proofpoint will provide the remedy set forth in the respective SLA.

5. Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-3480.

6. TERMINATION. Upon the effective date of termination of this Security Services Exhibit or the Agreement: Customer's license to use the Security Services will cease and Proofpoint will delete all backed-up Customer Data from Proofpoint systems within thirty (30) days of such termination.

SECURITY SERVICES EXHIBIT

This Security Services Exhibit is an exhibit to the General Terms and Conditions ("General Terms"). The General Terms are an integral part of this Security Services Exhibit and are incorporated by reference.

IN WITNESS WHEREOF, Proofpoint and Customer represent and warrant to the other that the person entering into this Security Services Exhibit is authorized to sign this Agreement on behalf of their respective party.

CUSTOMER:

PROOFPOINT, INC.:

Individual Signing:

[print name]

Individual Signing:

[print name]

Signature:

Signature:

Title:

Title:

Signing Date:

Signing Date:

1. DEFINITIONS. For purposes of this Security Services Exhibit the following definitions shall apply. Capitalized terms used in this Security Services Exhibit without separate definition shall have the meaning specified in the General Terms.

1.1 "Customer Data" means the rules and policies set by Customer in its use of the Security Services and the Customer e-mail and associated content managed by the Security Services.

1.2 "Customer Equipment" means Customer's computer hardware, software and network infrastructure used to access the Security Services.

1.3 "Security Service(s)" means the filtering and processing of email within the on-demand, Web-based email security and data loss prevention services provided by Proofpoint, including updates thereto.

1.4 "Users" means Customer's and its Affiliates' employees, agents, contractors, consultants or other individuals who are authorized by Customer to use the Security Services.

2. TERMS OF SECURITY SERVICES. Proofpoint shall make the Security Services available to Customer and its Affiliates in accordance with the General Terms, Order Form, this Security Services Exhibit and the Security Services Documentation. Customer's right to use the Security Services is limited to the maximum number of Mailboxes for each module specified in each Order Form.

3. CUSTOMER RESPONSIBILITIES. Customer is responsible for (i) all activities conducted under its User logins; (ii) obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use the Security Service and ensuring that the Customer Equipment and any ancillary services are compatible with the Security Service and comply with all configuration requirements set forth in the Security Services Documentation; and (iii) complying with all laws, rules and regulations regarding the management and administration of its electronic messaging system, including but not limited to,

obtaining any required consents and/or acknowledgements from its Users and service providers (if applicable) in managing its electronic messaging system. If Customer has elected to route outbound email through the Security Services, Customer is responsible for maintaining the outbound email filtering Security Services configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher. If Proofpoint has reason to believe that Customer has modified the outbound email configuration setting, Proofpoint reserves the right to monitor and reset such settings.

4. WARRANTIES.

4.1 Proofpoint warrants that the Security Service will substantially conform in all material respects in accordance with the Security Services Documentation. Customer will provide prompt written notice of any non-conformity. Proofpoint may modify the Security Service Documentation in its sole discretion, provided the functionality of the Security Service will not be materially decreased during the Term. As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the foregoing warranty, Proofpoint will (i) use reasonable efforts to fix, provide a work around, or otherwise repair or replace the Security Service or, if Proofpoint is unable to do so, (ii) terminate this Security Services Exhibit and return the Subscription Fees paid to Proofpoint or Reseller for such allegedly defective Security Services for the period commencing from Customer's notice of nonconformity through the remainder of the Initial Term or Extension Term, as applicable.

4.2 Proofpoint warrants that the Security Services will meet the requirements set forth in the Security Service Level Agreements (each, an "SLA"), as described on Proofpoint's website at <http://www.proofpoint.com/license>. In the event of a breach of the foregoing warranty, as Customer's sole and exclusive remedy, Proofpoint will provide the remedy set forth in the respective SLA.

5. Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-3480.

6. TERMINATION. Upon the effective date of termination of this Security Services Exhibit or the Agreement: Customer's license to use the Security Services will cease and Proofpoint will delete all backed-up Customer Data from Proofpoint systems within thirty (30) days of such termination.

Amendment Number 1
to
Contract Number DIR-TSO-3480
between
State of Texas, acting by and through the Department of Information Resources
and
SHI GOVERNMENT SOLUTIONS, INC.

This Amendment Number 1 to Contract Number DIR-TSO-3480 is between the Department of Information Resources (“DIR”) and SHI Government Solutions, Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract**, is hereby replaced in its entirety with **Contract** as amended by this Amendment Number 1.
2. **Appendix C, Pricing Index**, is hereby replaced in its entirety with **Appendix C, Pricing Index** as amended by this Amendment Number 1.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 1, and then the Contract.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

SHI GOVERNMENT SOLUTIONS, INC.

Authorized By: Signature on File

Name: Cassie Skelton

Title: Sr. Contract Specialist

Date: 8/30/2016

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 8/31/2016

Office of General Counsel: DB 8/31/2016

Amendment Number 2
to
Contract Number DIR-TSO-3480
between
State of Texas, acting by and through the Department of Information Resources
and
SHI GOVERNMENT SOLUTIONS, INC.

This Amendment Number 2 to Contract Number DIR-TSO-3480 is between the Department of Information Resources (“DIR”) and SHI Government Solutions, Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

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

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through July 19, 2018 or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) additional one-year renewal terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. Contract, Section 6, Notifications is hereby restated in its entirety as follows:

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Victoria Pubyalski
SHI Government Solutions, Inc.
1301 South Mo-Pac Expressway, Suite 375
Austin Texas 78746
Phone: (512) 582-6724
Facsimile: (512) 732-0232
Email: victoria_pubyalski@shi.com

3. Contract, Section 7., Software License Agreements, Section B., Conflicting or Additional Terms is hereby amended in its entirety as follows:

B. Conflicting or Additional Terms

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

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

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

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

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

The foregoing requirements do not apply to all contracts, including, but not limited to, contracts between Customer and software publisher.

4. Appendix A, Standard Terms and Conditions For Products and Related Services Contracts, is hereby restated in its entirety and replaced with the attached

Appendix A, Standard Terms and Conditions For Services Contracts dated 05/10/2017.

5. **Appendix C, Pricing Index**, is hereby deleted in its entirety and replaced with **Appendix C, Pricing Index**, as attached hereto.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 2, then Amendment Number 1 and finally the Contract.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than July 19, 2017.

SHI GOVERNMENT SOLUTIONS, INC.

Authorized By: Signature on File

Name: Natalie Castagno

Title: Director of Response Team, Sales Support

Date: 8/17/2017

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 8/22/2017

Office of General Counsel: Signature on File 8/21//2017

Amendment Number 3
to
Contract Number DIR-TSO-3480
between
State of Texas, acting by and through the Department of Information Resources
and
SHI Government Solutions, Inc.

This Amendment Number **3** to **Contract** Number **DIR-TSO-3480** ("**Contract**") is between the Department of Information Resources ("**DIR**") and SHI Government Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

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

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through July 19, 2019, or until terminated pursuant to the termination clauses contained in the Contract. The contract will renew automatically in one-year increments for one (1) additional year under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. **Appendix A, Standard Terms and Conditions for Product and Related Services Contracts dated 05/10/2017**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Product and Related Services Contracts dated 09/29/2017**, as attached.
3. **Appendix C – Pricing Index** is hereby restated in its entirety and replaced with Appendix C - Pricing Index attached hereto.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 3, then Amendment Number 2, then Amendment Number 1 and then the Contract.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than July 19, 2018.

SHI Government Solutions, Inc.

Authorized By: Signature on file

Name: Cassie Skelton

Title: Senior Contracts Manager

Date: 08/23/2018

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

Authorized By: Signature on file

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 08/24/2018

Office of General Counsel: Mark Howard 08/24/2018

Amendment Number 4
to
Contract Number DIR-TSO-3480
between
State of Texas, acting by and through the Department of Information Resources
and
SHI Government Solutions, Inc.

This Amendment Number **4** to **Contract** Number **DIR-TSO-3480** ("**Contract**") is between the Department of Information Resources ("**DIR**") and SHI Government Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Appendix C – Pricing Index** is hereby restated in its entirety and replaced with Appendix C - Pricing Index attached hereto.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment Number 1 and then the Contract.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

SHI Government Solutions, Inc.

Authorized By: Signature on file

Name: Cassie Skelton

Title: Contracts Manager

Date: 11/30/2018

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

Authorized By: Signature on file

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 12/5/2018

Office of General Counsel: Mark Howard 12/4/2018

Amendment Number 5
to
Contract Number DIR-TSO-3480
between
State of Texas, acting by and through the Department of Information Resources
and
SHI Government Solutions, Inc.

This Amendment Number 5 to **Contract** Number **DIR-TSO-3480** ("**Contract**") is between the Department of Information Resources ("**DIR**") and SHI Government Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Introduction, C. Order of Precedence** is hereby amended as follows:

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Proofpoint General Terms and Conditions; Appendix E, Proofpoint Security Exhibit, Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-213, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-213, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. **Appendix C – Pricing Index** is hereby restated in its entirety and replaced with Appendix C - Pricing Index attached hereto.
3. **Appendix D – Proofpoint General Terms and Conditions** is hereby added in its entirety attached hereto.
4. **Appendix E – Proofpoint Security Products Exhibit** is hereby added in its entirety attached hereto.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 5, then Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment Number 1 and then the Contract.

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

SHI Government Solutions, Inc.

Authorized By: Signature on file

Name: Natalie Castogno

Title: Director of Contracts and RFP's

Date: 10/2/2019

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

Authorized By: Signature on file

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 10/7/2019

Office of General Counsel: Mark Howard 10/2/2019

Amendment Number 6
to
Contract Number DIR-TSO-3480
between
State of Texas, acting by and through the Department of Information Resources
and
SHI Government Solutions, Inc.

This Amendment Number **6** to **Contract** Number **DIR-TSO-3480** ("**Contract**") is between the Department of Information Resources ("**DIR**") and SHI Government Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 6. Notification** is hereby amended to read as follows:

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Hershel Becker or Successor in Office
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700

If sent to the Vendor:

Victoria Pubylski
SHI Government Solutions, Inc.
1301 South Mo-Pac Expressway, Suite 375
Austin Texas 78746
Phone: (512) 582-6724
Facsimile: (512) 732-0232
Email: victoria_pubylski@shi.com

2. **Appendix A, Standard Terms and Conditions for Products and Related Services Contracts dated 09/29/2017** is hereby replaced in its entirety with the attached **Appendix A, Standard Terms and Conditions for Product and Services Contracts dated 11/06/2019.**

3. **Appendix C, Pricing Index** is hereby replaced in its entirety and replaced with the attached **Appendix C, Pricing Index (per Amendment 6)**.

All other terms and conditions of the Contract as amended, not expressly amended herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment 6, Amendment 5, Amendment 4, Amendment 3, Amendment Number 2, Amendment Number 1 and then the Contract.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

SHI Government Solutions, Inc.

Authorized By: Signature on File

Name: Natalie Castagno

Title: Director of Contracts and RFPs

Date: 3/5/2020

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 3/11/2020

Office of General Counsel: Mark Howard 3/10/2020

Amendment Number 7
to
Contract Number DIR-TSO-3480
between
State of Texas, acting by and through the Department of Information Resources
and
SHI Government Solutions, Inc.

This Amendment Number 7 to **Contract** Number **DIR-TSO-3480** ("**Contract**") is between the Department of Information Resources ("**DIR**") and SHI Government Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

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

DIR and Vendor hereby agree to extend the term of the Contract for ninety (90) calendar days through October 17, 2020, or until terminated pursuant to the termination clauses contained in the Contract. There are no additional renewal options remaining for the Contract.

All other terms and conditions of the Contract as amended, not expressly amended herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 7, then Amendment 6, then Amendment 5, then Amendment 4, then Amendment 3 then Amendment 2, then Amendment 1, and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 7/19/2020.

SHI Government Solutions, Inc.

Authorized By: Signature on file

Name: Kristina Mann

Title: Sr. Lead Contract Specialist

Date: 7/16/2020

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

Authorized By: Signature on file

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 7/17/2020

Office of General Counsel: M.H. 7/17/2020

Exhibit C

CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL AWARDS

SHI GOVERNMENT SOLUTIONS, INC., (“Contractor”), understands and acknowledges that this Agreement may be totally or partially funded with federal and or state funds. As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal and or state terms as stated below. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. The Contractor shall require that these clauses shall be included in each covered transaction at any tier.

1. Remedies and Breach.

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2. Termination.

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3. Equal Employment Opportunity.

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance modified only if necessary to identify the affected parties.

4. Davis-Bacon Act.

As amended (40 U.S.C. 3141–3148), when required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Sub-contractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions under a Contract or Agreement.

Contractor acknowledges that the federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for state (or Federal) purposes. Contractor will comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements”.

7. Clean Air.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office. The Contractor agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”. It will report violations of use of prohibited facilities to the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

8. Clean Water.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office. The Contractor agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”. It will report violations of use of prohibited facilities to the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

9. Energy Policy and Conservation Act.

The Contractor must comply with the requirements of The Energy Policy and Conservation Act (42 U.S.C. Section 6201) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

10. Government-wide Debarment and Suspension.

The Contractor shall comply and facilitate compliance with the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. A contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Contractor certifies that it and all its subcontractors at every tier will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, award, including any extension, continuation, renewal, amendment, or modification covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352.

12. Procurement of Recovered Materials.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.