State of Texas

Department of Information Resources

MSA Attachment 2
Version 2.0

Insurance and Risk of Loss

Data Center Services (DCS)
Mainframe Services RFO
DIR-CPO-TMP-439

1 INSURANCE

(a) **Requirements**. Successful Respondent agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability during the Term of the Agreement:

(i) Workers' Compensation and Employer's Liability Insurance in full compliance with the applicable Laws of the State and, as applicable, such other state in which the work is to be performed. Each such policy shall contain a waiver of subrogation endorsement against the State, DIR and DIR Customers and their respective officers, directors, employees, agents, successors and assigns.

The limits of liability of Workers' Compensation Insurance shall be not less than the limits required by applicable Law.

The limits of liability of Employer's Liability Insurance shall not be less than $1,000,000 per employee by accident / $1,000,000 per employee by disease / $1,000,000 policy limit by disease (or, if higher, the policy limits required by applicable Law).

(ii) Commercial General Liability Insurance (including coverage for Contractual Liability assumed by Successful Respondent under this Agreement, Premises-Operations, Completed Operations-Products and Independent Contractors and, to the extent commercially reasonable, coverage for explosion, collapse, and underground property damage hazards) providing coverage for bodily injury, personal injury and property damage with limits of not less than $5,000,000 per occurrence. This coverage may be provided with a combination of primary and excess insurance policies.

(iii) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than $1,000,000 per occurrence, except as may otherwise be required by Law.

(iv) Professional Liability (also known as Errors and Omissions Liability) and, as and to the extent becoming commercially available, Cyber Risk Insurance covering acts, errors and omissions arising out of Successful Respondent's operations or Services in an amount not less than $10,000,000 per claim and policy aggregate.

(v) Comprehensive Crime Insurance including Employee Dishonesty Insurance and Computer Fraud Insurance, covering the loss of money, securities, and other property belonging to DIR or a DIR Customer resulting from any fraudulent or dishonest acts committed by Successful Respondent employees, acting alone or with others, in an amount not less than $5,000,000 per occurrence.

(vi) All-risk property insurance covering loss or damage to Successful Respondent owned or leased Equipment and other tangible assets used to provide the Services in an amount not less than the full replacement cost of such Equipment and assets.

(b) **Approved Companies**. All such insurance shall be procured with reputable insurance companies and in such form as is usual and customary to Successful Respondent's business. Such insurance companies shall maintain a rating at least "A-" and be at least a Financial Size Category VIII as both criteria are defined in the most current publication of Best's Policyholder Guide or comparable rating agency equivalent where applicable.

(c) **Endorsements**. Successful Respondent shall obtain the following endorsements to its policy or policies of insurance (or so reflect in appropriate policy certificate(s)) as are necessary to cause the policy or policies to comply with the requirements stated herein.

(i) Successful Respondent's insurance policies as required herein under Sections 1(a)(ii) and (iii) shall include DIR and DIR Customers and their respective officers, directors and employees as Additional Insureds thereunder for liability (subject to the terms of this Agreement) arising at any time in connection with the performance of Successful Respondent or Successful Respondent Personnel under this Agreement. The policy required under Section 1(a)(ii) shall have no cross-suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.

The Successful Respondent insurance policies required under Sections 1(a) must either (A) provide coverage on a per occurrence basis (i.e., not claims-based) or (B) if the insurance described in Section 1(a) is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the contract and acceptance by DIR. The Successful Respondent shall use best efforts to ensure that coverage, including any renewals, shall have the same retroactive date as the Agreement.

(ii) The Successful Respondent insurance policy required under Section 1(a)(v) shall include DIR and DIR Customers and their respective officers, directors and employees as loss payees as their interests may appear.

All policies provide, (or to the extent such policy does not so provide, Successful Respondent shall cause the applicable insurance company to agree to provide such notice) that should the policy be prior to cancelled before the expiration date thereof, Successful Respondent shall use best efforts to provide thirty (30) days notice (ten (10) days for non-payment) prior to cancellation. Should any policy expire or be canceled during the Term and should Successful Respondent thereafter fail to

immediately procure replacement insurance as specified, DIR reserves the right (but not the obligation) to procure such insurance and to deduct the cost thereof from any sums due Successful Respondent under this Agreement.

(iii) All insurance required under this Section 1 shall be primary insurance and any other valid insurance existing for DIR's benefit shall be excess of such primary insurance as respects the scope of this Agreement and as respects Successful Respondent's liability.

(d) **Minimum Amounts, Self-Insurance** These insurance provisions set forth the minimum amounts and scopes of coverage to be maintained by Successful Respondent and are not to be construed in any way as a limitation on Successful Respondent's liability under this Agreement. Any and all deductibles in the above-referenced nsurance policies shall be assumed by, for the account of, and at the sole risk of the Successful Respondent.

(e) **Certificates**. Successful Respondent shall provide DIR with certificates of insurance evidencing compliance (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect.

(f) **No Implied Limitation**. The obligation of Successful Respondent to provide the insurance specified herein shall not limit or expand in any way any obligation or liability of Successful Respondent provided elsewhere in this Agreement. The rights of DIR and DIR Customers to insurance coverage under policies issued to or for the benefit of one or more of them are independent of this Agreement shall not be limited by this Agreement.

(g) **Waiver of Subrogation**. With respect to insurance coverage to be provided by Successful Respondent pursuant to Sections 1(a) (ii) and (iii) herein, the insurance policies shall provide that the insurance companies waive all rights of subrogation against, the State, DIR, the DIR Customers, and their respective Affiliates, officers, directors and employees. Successful Respondent waives its rights to recover against DIR and DIR Customers and their respective officers, directors, employees, agents, successors and assigns in subrogation or as subrogee for another party and shall, to the extent available on a commercially reasonable basis, similarly arrange for such waiver with respect to the coverage provided by Successful Respondent pursuant to Section 1(a)(i). Notwithstanding the foregoing, Successful Respondent acknowledges and agrees that the enforceability of any such waivers is effective to the extent authorized by applicable Laws (including the constitution of the State).

2 RISK OF LOSS

(a) **General.** Each Party shall be responsible for risk of loss of, and damage to, any Equipment, Materials, or other items in its possession or under its control Successful Respondent shall be deemed to possess and control of all Equipment, Materials, and other items located in Successful Respondent Facilities or in DIR Facilities used by

Successful Respondent to provide the Services excluding Equipment, Materials, and other items owned by Service Component Provider. Each Party shall promptly notify the other of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of any such Equipment, Materials, and other items in the possession or under the control of such Party, whether or not insured against by such Party, whether partial or complete, which is caused by any act, omission, fault or neglect of such Party (an "**Event of Loss**"). Each Party shall promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of such other Party's tangible property or real property (whether owned or leased)**.**

(b) **Waiver.** Successful Respondent and DIR each waive all rights to recover against the other Party for damage, destruction, loss, theft, or governmental taking of their respective real or tangible personal property (whether owned or leased) from any cause to the extent covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. Successful Respondent shall cause its insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies.