



## **Department of Information Resources**

**Request for Offer  
DIR-TSO-TMP-234**

**Hardware, Software and Services for Wireless  
Voice, Data, Pagers and Mobile Satellite Voice**

**Issued: 12/9/2015**

**Initial Responses Due: 1/22/2016**

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## **1. Introduction**

### **1.1. Purpose**

The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice Services to the State of Texas, acting by and through the Department of Information Resources (DIR).

As a result of this RFO, DIR expects to receive and evaluate responses and select one or more qualified Vendors with whom to enter into negotiations. Section 4 of this RFO contains more information regarding the response evaluation and Vendor selection process. DIR reserves the right to award more than one contract from this RFO. All contracts awarded shall be indefinite quantity contracts with no minimum guarantees of any business.

### **1.2. Background**

#### **1.2.1 Communications Technology Acquisition**

DIR, through its Communications Technology Division, is conducting this procurement under Chapter 2170, Texas Government Code, by negotiating, managing, and administering telecommunications contracts with communications technology providers. Telecommunications Customers include any Texas state agency, including each house of the legislature and other legislative agencies, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, certain private institutions of higher education meeting the qualifications of Section 2170.004 (5), Texas Government Code, and assistance organizations, as defined by Section 2175.001, Texas Government Code. Telecommunications Products and services to be acquired under this section include but are not limited to: wireless voice, wireless data, pagers and mobile satellite voice service.

DIR combines the buying power of eligible Customers to obtain volume-discounted pricing for selected technology products and services. For contracts awarded as a result of this procurement, the Telecommunications Customers, as defined above, will be able to have a direct sales relationship with the selected Communications Technology Vendors awarded telecommunications products and services. All Customers contact the vendor for product and/or services and pricing information and send their purchase orders (with the DIR contract number) and payments directly to the awarded Vendors, not to DIR.

#### **1.2.2 Cost Avoidance Performance Measures**

As part of its performance measures reported to state leadership, DIR must show

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the cost avoidance realized by the State for the products and services obtained under DIR contracts. Cost avoidance is the difference between the negotiated DIR contract price and the prevailing market price.

**1.2.3 Cost Recovery Fee/Administrative Fee**

DIR's telecommunications program is a cost recovery program. DIR, in its discretion, formulates cost recover fees (CRF) per Service designed to fulfill its program needs, as authorized in Chapter 2170, Texas Government Code. Such CRFs may change over time and DIR will provide Vendor with 30 days advance notice of a change in the CRFs. Vendor shall include the applicable CRF, as a component of its Price, in its bills to the Customers and shall remit the direct sales transaction CRF to DIR on a monthly basis. For the purposes of responding to this RFO, the CRF of 2% shall be used in calculating pricing specified in Bid Package 2 for telecommunications services, including wireless voice and data, pagers and mobile satellite voice services. For CRF changes, Vendor shall implement, charge and remit to DIR on a going forward basis the new effective CRF in 2 billing periods from CRF Amendment Effective Date.

**1.2.4 Historical Sales**

DIR currently has a contract with multiple Vendors to provide wireless voice and data services and pager services. Sales volumes of products sold through the contracts are as follows:

<b>Vendor</b>	<b>Fiscal Year 2013</b>	<b>Fiscal Year 2014</b>	<b>Fiscal Year 2015</b>	<b>Grand Total</b>	<b>Expires</b>
AT&T	\$36,605,997	\$47,146,215	\$43,187,038	<b>\$126,939,250</b>	4/12/2016
Sprint Solutions, Inc.	\$18,297,521	\$11,828,157	\$7,133,602	<b>\$37,259,280</b>	4/30/2016
Verizon Wireless	\$28,272,950	\$39,993,239	\$45,039,211	<b>\$113,305,400</b>	3/21/2016
T-Mobile USA, Inc.	\$640,529	\$917,259	\$1,067,764	<b>\$2,625,552</b>	3/21/2016
Globalfone (Satellite phone services)	\$137,485	\$114,672	\$115,310	<b>\$367,467</b>	5/24/2016
SPOK (Pagers)	\$1,239,902	\$1,194,518	\$960,671	<b>\$3,395,091</b>	6/6/2016
American Messaging Service (Pagers)	\$198,427	\$193,505	\$128,271	<b>\$520,203</b>	6/14/2016

**2. Scope**

**2.1. Products and Services**

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DIR intends to contract to provide Hardware, Software and Services for Wireless Voice and or Data Service. The purpose of these products and services is to provide DIR eligible customers an effective and efficient means to obtain a variety of wireless voice and or data solutions. These will include but are not limited to Telecommunications Products and Services, such as wireless equipment, wireless voice, wireless data, network neutral cellular signal boosters, pagers and mobile satellite voice equipment. This RFO is **not** for fixed satellite services or any services awarded under the TEX-AN NG contracts.

Any Vendor responding to this RFO must submit pricing for the products and services requested herein. Vendor shall provide a representative sample of products and services offered for the purposes of obtaining pricing and evaluating the responses to this RFO. Pricing shall be contained in the Excel spreadsheet attached as "Bid Package 2" to the posting for this RFO, requisition number DIR-TSO-TMP-234, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. "Bid package 2" is a representative sample only and is not to be considered an exhaustive list of all available products and services provided by the Vendor. All hardware, software, and services for wireless voice and data may be made available through a Contract.

DIR requests that all activation fees and termination fees (including early termination fees) be waived by Vendors as a part of their proposal. Further, based on current DIR contracts, DIR requests that all USF and Federal E911 fees be waived by Vendors as a part of their proposal. Any charges, including telecommunications taxes, fees and surcharges, not included in Bid Package 2, Pricing Index, shall not be billed by the Vendor to DIR or its Customers. DIR will verify whether any disclosed taxes, fees and/or surcharges are applicable to its Telecommunications Customers prior to including in any resulting Contract.

Vendor is required to respond to the requirements in Exhibit A, Vendor Information Form.

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency Customers must procure products that comply with the Accessibility Standards defined in the Texas Administrative Code, 1 TAC 206 and 1 TAC 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accordingly, Vendor must provide electronic and information resources and associated product documentation and technical support that comply with these Accessibility Standards (in the form of a Voluntary Product Accessibility Template, or "VPAT") in its response to this RFO. Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org/public-policy/accessibility>. Vendors that claim their products are exempt from accessibility requirements must present that position to DIR as a question during the question and answer period of the solicitation.

Electronic Product Environment Assessment Tool (EPEAT).

Vendor must indicate whether Vendor's products offered under this RFO are EPEAT certified and identify the applicable EPEAT rating (bronze, silver or gold) for certified products. If Vendor's products are not EPEAT certified, Vendor must describe Vendor's efforts to attain EPEAT certifications.

## **2.2. Related Services**

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Related services are any value-added service that Vendor may perform as related to the products proposed in Section 2.1. Related services include but are not limited to: voice and data transmission in conjunction with wireless equipment and /or mobile satellite voice transmission in conjunction with satellite equipment, product installation, maintenance and support, and product training. Any Vendor offering product-related services must submit a description of those services and the related pricing in the Excel spreadsheet attached as "Bid Package 2".

DIR, through this RFO, is providing Wireless Carriers the opportunity to connect their DIR customer secured wireless networks to the DIR network. This new connectivity will have the ability to transport the wireless carriers DIR customer traffic, over Ethernet, via a Layer 3 routed hand-off to the DIR network. DIR will then pass the traffic to the customer's internal network. Connectivity into the DIR network must be redundant with one connection into the Network Security and Operations Center located at 1001 West North Loop Blvd, Austin Texas and the other connection at the Sam Houston Building located at 201 East 14<sup>th</sup> Street, Austin Texas. These connections must come from diverse Points of Presence (POPs).

DIR does not intend to incur costs for this connectivity as this opportunity to connect to DIR's network is being offered to wireless carriers as a value add to the wireless carrier.

DIR is also interested in Vendors responding with Emerging Technologies Services that may be developed and deployed during the lifecycle term of the contract, but may not be available at the time of submission to this RFO. Further information on Emerging Technologies can be reviewed in Exhibit A, Section 18 of this RFO.

This RFO is **not** a solicitation for professional or consulting services as defined in Chapter 2254, Texas Government Code.

### **2.3. Form of Contract**

The final terms and conditions of any contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that shall be included in any awarded contract are contained in the sample *Contract for Products and Related Services* attached as "bid package 3" and the *Standard Terms and Conditions For Products and Related Services Contracts* attached as "bid package 4" to the posting for this RFO, requisition number DIR-TSO-TMP-234, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>.

Item 17 of Exhibit A contains the format for Vendor to note any exception to any provision, term, or condition specified in the *Contract for Products and Related Services* and *Standard Terms and Conditions For Products and Related Services Contracts*. An explanation as to why the Vendor cannot comply with the provision, term, or condition and proposed alternative language **must** be included in the response. If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at some later date.

DIR reserves the right to make changes to the *Contract for Products and Related Services*

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or the *Standard Terms and Conditions For Products and Related Services Contracts* if it is in the best interest of the State to do so. Should this occur prior to the award of any contracts as a result of this RFO, any Vendors selected for negotiations will be notified.

### **3. General Information**

#### **3.1. Point of Contact**

All communications regarding this RFO must be addressed in writing to:

Carrie Cooper  
Department of Information Resources  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
Phone: 512-936-2353  
Fax: 512-936-6896  
E-Mail: [carrie.cooper@dir.texas.gov](mailto:carrie.cooper@dir.texas.gov)

#### **3.2. Contact with DIR Staff**

Upon issuance of this RFO, employees and representatives of DIR other than the Point of Contact identified in Section 3.1 will not discuss the contents of this RFO with any Vendor or their representatives. **Failure of a Vendor and any of its representatives to observe this restriction may result in disqualification of any related response.** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

#### **3.3. Anticipated Schedule**

##### **3.3.1 RFO Schedule**

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. DIR reserves the right to modify these dates at any time, with appropriate notice to prospective Vendors.

<b>Date/Time</b>	<b>Activity</b>
December 9, 2015	Publish RFO on Electronic State Business Daily
December 15, 2015 2:30 pm	Vendor Conference (optional)
December 18, 2015 2:00 pm	Deadline for submitting questions
December 23, 2015 5:00 pm	Deadline for answering questions
<b>January 22, 2016 2:00 pm</b>	<b>Deadline for submitting Responses to RFO</b>
January 22, 2016 - until completed	Evaluation of responses, negotiation and contract execution

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**3.3.2 Vendor Conference**

An optional Vendor Conference will be held on December 15, 2015 at 2:30 pm Central Time (CT) at the location listed below. Please bring a copy of the RFO to the Vendor Conference, as DIR will not supply copies.

William P. Clements Building  
300 West 15th  
Room 103  
Austin, Texas 78701

**Webinar Information**

A webinar will be held on the date and time specified in RFO Section 3.3.1 above.

To reserve a webinar seat, register at:

<https://attendee.gotowebinar.com/register/1045185129255269889>

After registering you will receive a confirmation email containing information about joining the Webinar.

DIR will provide conference and webinar attendees with an opportunity to submit written questions at the conference. Although DIR may provide tentative verbal responses to the written questions at the conference, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

DIR will also provide Vendors the opportunity to submit written questions at the conference. All questions submitted at the conference must reference the appropriate RFO page and section number. Although DIR may provide tentative responses to questions at the conference, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

DIR will also provide Vendors the opportunity to submit written questions at the conference. All questions submitted at the conference must reference the appropriate RFO page and section number. Although DIR may provide tentative responses to questions at the conference, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

**3.3.3 Written Questions and Official Answers**

Vendors shall submit all questions regarding this RFO by fax, e-mail, or in writing to the Point of Contact listed in Section 3.1. Questions regarding this RFO will be accepted until 2:00 pm Central Time (CT) on December 18, 2015. Questions will be answered by December 23, 2015, no later than 5:00 pm. (CT). Note: Texas

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observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-234, on the Electronic State Business Daily (ESBD), <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

Any addenda and/or amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

### **3.4. Historically Underutilized Businesses**

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency shall make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

1. 11.2% for heavy construction other than building contracts;
2. 21.1% for all building construction, including general contractors and operative builders' contracts;
3. 32.9% for all special trade construction contracts;
4. 23.7% for professional services contracts;
5. 26% for all other services contracts;
6. 21.1% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and CPA's HUB Rules, 34 TAC, Chapter 20.

Historically Underutilized Businesses (HUBs) are strongly urged to respond to this RFO. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. Vendors who meet the qualifications are strongly encouraged to apply for certification as HUBs.

#### **3.4.1 Subcontracts with HUBs**

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. **The goal for this RFO is 26%. ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE A HSP AS INSTRUCTED SHALL RESULT IN ELIMINATION OF**

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**THE RESPONSE FROM CONSIDERATION.** The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are attached to this RFO as Appendix C. If Vendor does not plan to subcontract, Vendor must state that fact in their plan. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.

**3.4.2 HUB Continuing Performance**

Any contracts awarded as a result of this RFO shall include reporting responsibilities related to HUB subcontracting. Awarded Vendors may not change any subcontractor without submitting a revised HUB Subcontracting Plan.

**3.4.3 HUB Resources Available**

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Web site at: <http://www2.cpa.state.tx.us/cmb1/hubonly.html>. For additional information, contact the CPA's HUB program office at [cpa.hub@cpa.state.tx.us](mailto:cpa.hub@cpa.state.tx.us). If Vendors know of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

**3.5. Vendor Qualifications**

**3.5.1 Authorized Vendors**

Vendors who respond to this RFO must be one of the following:

- 1) Manufacturer or publisher of a product who will sell directly to Customers through a DIR Contract.
- 2) Manufacturer or publisher of a product who will execute a contract with DIR and designate one or more qualified dealers or resellers (Order Fulfillers) to sell directly to Customers on its behalf. The manufacturer or publisher may also sell directly to Customers.
- 3) Dealer or reseller who will sell directly to Customers through a DIR Contract.
  - a. Upon request and prior to offering product for sale, Vendors responding to this RFO must supply a signed letter from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products to the agencies and political subdivisions of the State, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. **Failure to supply the letter, once it is requested by DIR, may result in elimination of the related proposal from the solicitation process.**

**Federal Requirements**

- 1) State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Vendor listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Vendor awarded a Contract as a result of this RFO shall agree that should

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at any time during the term of the contract they become listed on the Terrorism List, they shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure any vendor awarded a contract as a result of the RFO remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the contract without recourse in the event Vendor becomes listed on the Terrorism List.

- 2) Should any Vendor awarded a Contract as a result of this RFO become suspended or debarred from doing business with the federal government as listed in the *System of Award Management (SAM)* maintained by the General Services Administration, the vendor's contract will be terminated without recourse.
- 3) Vendor shall comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

**3.5.2 Vendor Performance and Debarment**

In accordance with 34 TAC, Chapter 20, Subchapter C, any Vendor that is debarred from doing business with the State of Texas will not be awarded a contract under this solicitation. The list of debarred Vendors is located on the CPA Web site at

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/debarred/](http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/).

**3.5.3 Required Vendor and Subcontractor Current and Former State Employee Disclosures**

Vendor shall disclose, for itself and on behalf of all of its Subcontractors, in its response to Section 17 of Appendix A to the RFO, all of the following:

- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.
- 3) Vendor will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

**3.6. Response Deadline and Submission Requirements**

Vendors are invited to submit responses in accordance with the requirements outlined in

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this document. Responses must be received by DIR on or before **2:00 PM (CT) on January 22, 2016. No late responses will be reviewed.** Responses must be hand-delivered or mailed to the submittal address listed in Section 3.7.1. No facsimile or e-mail responses shall be accepted.

**3.6.1 Official Timepiece**

The clock in the DIR Purchasing Office at 300 W. 15<sup>th</sup> Street, 13<sup>th</sup> floor, Room 1335, is the official timepiece for determining compliance with the deadline. All responses will be date and time stamped when received by the Purchasing Office on the 13<sup>th</sup> floor.

**3.6.2 Hand Delivery of Responses**

All Vendors and courier delivery service personnel will be required to check-in at the security desk on the 1<sup>st</sup> floor at 300 W. 15<sup>th</sup> Street. Therefore, it is advised that Vendors allow extra time for building security check-in if hand delivering responses or using a courier delivery service. DIR will not be responsible for delays associated with building security compliance.

**3.6.3 United States Postal Service Delivery of Responses**

Delivery of responses via United States Postal Service is acceptable. However, due to the State's mail processing procedures, this method may cause a 3 to 4 day delay in delivery to the DIR Purchasing Office. DIR will not be responsible for any delays associated with this method of delivery.

**3.7. Response Format and Contents**

**3.7.1 Submittal Address and External Packaging of Response**

Responses should be addressed to:

Department of Information Resources  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
Attn: Carrie Cooper

The external packaging of the response must reference "RFO DIR-TSO-TMP-234" and must include the name and address of the Vendor submitting the response.

**3.7.2 Number of Copies**

Each Vendor must submit the complete response as follows:

1. One (1) signed original (clearly marked) of the complete response, including one (1) signed original of the HUB Subcontracting Plan;
2. One (1) signed original of the HUB Subcontracting Plan in a separate envelope;
3. Three (3) thumb drives (**clearly marked with Vendor Name**) containing copies of the complete response;

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4. One (1) thumb drive containing any and all response materials, which Vendor asserts, are confidential or proprietary\*;
5. One (1) thumb drive containing any and all copyrighted materials in the Vendor's response\*; and
6. One (1) thumb drive containing any and all non-proprietary/confidential and non-copyrighted materials in the Vendor's response\* (redacted copy for public release).

\* If Vendor's response does not contain such materials, then thumb drives for these items are not required.

Paper responses must be bound in a 3-ring binder and the cover of the binders must reference "DIR-TSO-TMP-234" and include the name and address of the responding Vendor.

Each thumb drive must be clearly marked as to its contents. **The response materials on each thumb drive must be compatible with Microsoft Office.** All materials must be submitted in an editable format (e.g. Microsoft Word, Microsoft Excel). **Do not submit electronic materials in PDF format.** If there are any disparities between the contents of the printed response and any of the response materials on the thumb drives, the contents of the signed original printed response will take precedence.

**NOTE: Thumb drives must be securely fastened to the 3-ring binder.**

**3.7.3 Mandatory Response Contents**

**VENDOR MUST PROVIDE THE ITEMS LISTED BELOW OR THE RESPONSE WILL BE REJECTED.**

**1) Vendor Information and Technical Qualifications – Exhibit A**

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.

**2) Contract Support Plan - Exhibit B**

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded.

**3) HUB Subcontracting Plan Forms – Appendix C**

All Vendors, **INCLUDING THOSE WITH HUB DESIGNATION**, must submit a HUB Subcontracting Plan. HUB Subcontracting Plan Forms are provided in Appendix C. Refer to Section 3.4 for more information regarding HUB subcontracting. **Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors.**

**4) Product Pricing – Bid Package 2**

Brands and products should be listed in the Excel spreadsheet that is attached as "Bid Package 2" to the posting for this RFO, requisition number DIR-TSO-TMP-234 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. Vendor shall provide pricing for the brands and products applicable to their response. The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP). Vendor must provide a description of MSRP

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or method being utilized to derive the MSRP. If Vendor offers government and educational pricing, both pricing structures must be included in Vendor's response. Vendor shall disclose any applicable telecommunications taxes, fees and surcharges in Bid Package 2, Pricing Index. **Failure to disclose such taxes, fees and surcharges in Bid Package 2, Pricing Index, waives these taxes, fees and/or surcharges under the Contract.**

**5) Services Description and Pricing – Bid Package 2**

Vendor shall provide a detailed description and the pricing for any value-added, product-related services that Vendor is proposing to offer in response to this RFO. Product-related services include but are not limited to: voice and data transmission in conjunction with wireless equipment and /or satellite voice and data transmission in conjunction with satellite equipment, product installation, maintenance and support and product training. The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).

**6) Software License Agreement and/or Service Agreement**

Vendor shall provide any Software License Agreement and/or Service Agreement that are applicable to the products and/or related services Vendor is proposing. These Agreements **may not** contain any language that is in conflict with or weakens the terms and conditions of the *Contract for Products and Related Services* and the *Standard Terms and Conditions For Products and Related Services Contracts*.

**7) Manufacturer's Letter of Authorization**

If applicable, letter from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products and services to DIR Customers as defined in Section 1.2.1 hereof, and may sell such products and services under the terms and conditions of the DIR Contract, in support of Vendor's proposal.

**3.7.4 References**

Vendor must send the Vendor Reference Questionnaire (See Bid Package 5) to three (3) companies or government agencies. Instructions are included in Bid Package 5. DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR as instructed in Bid Package 5. The Vendor may not submit the reference form to DIR. Should this occur, the reference will be scored with a zero (0).

**3.8. Rejection of Responses**

DIR has sole discretionary authority and reserves the right to reject any and all responses received as a result of this RFO. Responses that do not comply with the mandatory submission requirements shall be rejected. In addition, DIR reserves the right to accept or reject, in whole or in part, any responses submitted, and to waive minor technicalities when in the best interest of the State.

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**3.9. Right to Amend or Withdraw RFO**

DIR reserves the right to alter, amend or modify any provision of this RFO, or to withdraw this RFO at any time prior to the award of a contract if to do so is in the best interest of the State. DIR reserves the right to re-solicit for like or similar products and services whenever it determines re-solicitation to be in the best interest of the State.

Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-234 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. It is the responsibility of Vendors to check periodically for addenda.

**3.10. Pre-agreement Costs**

DIR shall not be responsible or liable for any cost incurred by any Vendor in the preparation and submission of its response to this RFO, or for other costs incurred by participating in this procurement process.

**3.11. Ownership of Responses**

All responses become the property of DIR. DIR reserves the right to use any and all information or materials presented in response to this RFO. Disqualification of a Vendor's response does not eliminate this right.

**3.12. Public Information**

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. If a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the Vendor must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).

The determination of whether information is confidential and not subject to disclosure under the Public Information Act is the duty of the Office of Attorney General (OAG). DIR must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Vendor are not acceptable. DIR shall comply with the all opinions of the OAG.

DIR assumes no responsibility for asserting legal arguments on behalf of any Vendor. Vendors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

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## **4. Evaluation, Negotiations, and Award**

### **4.1. Evaluation of Responses**

DIR will review proposals to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. DIR will establish an Evaluation Committee to review all responses that have not been rejected. DIR may ask any or all Vendors to elaborate on or clarify specific points or portions of their response. Clarifications shall take the form of written responses to questions. Once initial evaluation of responses has been completed, the Evaluation Committee shall turnover the tabulated scores to the DIR purchasing office and shall conclude their duties.

### **4.2. Evaluation Criteria**

In addition to the weighted criteria listed below DIR also reviews additional Pass/Fail criteria as follows:

- DUNS Number and report is a Pass/Fail review conducted by the Finance Group
- New legislative requirements mandate DIR to use the Comptroller's Vendor Performance Tracking System (VPTS) and the Vendor's "grade" when considering contract awards. The VPTS grading system is A-F and any vendor with a grade of C or less cannot be awarded a contract.

The criteria and weight to be used in determining the best value for the State are as follows:

- 40% - Pricing (bid package 2)
- 30% - Vendor's plan for supporting the Contract and Vendor's history, experience and technical qualifications in providing the products and services requested. (*Exhibit A & B*)
- 15% - Acceptance of standard contract terms and conditions (refer to section 2.3)
- 15% - Vendor's Customer references (bid package 5)

### **4.3. Best and Final Offer**

DIR in its discretion shall make the determination whether to engage in the Best and Final Offer process. The Best and Final Offer process, if held, will also be scored.

DIR reserves the right to continue to evaluate responses until such point as the best value, as defined by §2157.003, Texas Government Code, is obtained for the State.

### **4.4. Negotiations**

At the conclusion of the evaluation, as described within Sections 4.1, 4.2 and 4.3 above, DIR staff shall determine the number of Vendors with which it will start contract negotiations. In its discretion, DIR shall terminate contract negotiations when DIR determines that the best value for the State has been obtained. Then the staff will recommend award of one or more contracts to the Executive Management.

### **4.5. Award of Contract**

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The Executive Management shall make the decision to award any contracts, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final. Any award for this RFO shall be posted under requisition number DIR-TSO-TMP-234 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>, upon execution of a contract with one or more Vendors. All responses and working papers pursuant to this RFO are not subject to disclosure under the Public Information Act until the contract has been executed.

#### **4.6. Vendor Protest Procedures**

Any Vendor who is aggrieved in connection with this RFO, evaluation, or award of a contract may formally protest to DIR in accordance with the vendor protest procedures posted on the DIR Web site at:

<http://dir.texas.gov/View-Information-For-Vendors/Pages/Content.aspx?id=21>

**END OF RFO**

**Exhibit A**  
**Vendor Information Form**

**This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.**

- 1) Company Name: \_\_\_\_\_
- 2) Comptroller of Public Accounts Vendor Identification Number: \_\_\_\_\_
- 3) Principal place of business  
Address:  
City:  
State:  
Zip Code:
- 4) Facility responsible for servicing the contract  
Address:  
City:  
State:  
Zip Code:
- 5) Contact Person regarding Vendor's response to the RFO  
Name:  
Address:  
City, State, Zip:  
Phone Number:  
Fax:  
Email:
- 6) Contact Person responsible for contract negotiation  
Name:  
Address:  
City, State, Zip:  
Phone Number:  
Fax:  
Email:
- 7) Indicate whether or not your company is a certified Historically Underutilized Business (HUB) with the State of Texas by the CPA.  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No
- 8) Provide the year in which your company was created/incorporated.
- 9) Provide a history of your company.
- 10) Provide the number of years your company has sold the products/services requested in this RFO.

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11) Provide the number of years your company has sold the products/services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.

12) Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the products/services listed in this RFO from your company within the last 12 months.

\_\_\_\_\_Yes \_\_\_\_\_No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

13) Indicate whether or not your company holds a contract for use by public entities (state agencies, local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO.

\_\_\_\_\_Yes \_\_\_\_\_No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

14) Indicate whether or not your company holds a contract with any entity or consortium authorized by Texas law to sell said products and services to Texas state agencies, local governments, independent school districts, and institutions of higher education.

\_\_\_\_\_Yes \_\_\_\_\_No

If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

15) For each manufacturer vendor is proposing in the RFO, indicate whether or not the manufacturer has a program to recycle the manufacturer's computer equipment and if they recycle computers from other manufacturers. If you are a reseller, you must indicate whether your company has a recycling program or will use the manufacturer's recycling program for the products listed in this RFO.

Manufacturer Name \_\_\_\_\_

Recycles their own computers? \_\_\_\_\_Yes \_\_\_\_\_No

Recycles other manufacturer's computers? \_\_\_\_\_Yes \_\_\_\_\_No

If Reseller, check one that applies:

\_\_\_\_\_Will use Manufacturer's program

\_\_\_\_\_Will use Vendor's own program

Provide documentation or citation (url) where the recycling program resides to enable DIR to verify compliance with this requirement. \_\_\_\_\_

16) Vendor must send the Vendor Reference Questionnaire (See Bid Package 5) to three (3) companies or government agencies in which **Hardware, Software and Service for Wireless Voice, Data, Pagers and Satellite Voice** were provided. Instructions are included in Bid Package 5. DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. Should this occur, the reference will be scored with a zero (0).

17) List below by subsection all exceptions to the *Contract for Products and Related Services and Standard Terms and Conditions For Products and Related Services Contracts*. You must include the basis of your

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exceptions and provide proposed alternate language. If Vendor fails to list exceptions in its response, Vendor shall not be permitted to submit exceptions to the same section during the negotiation process or thereafter.

Section	Section Title	Exception	Proposed Language

18) Vendor shall describe their solution which satisfies the following requirements:

1. Wireless Voice and/or Data and Mobile Satellite Voice

- A. Provide Wireless Voice and/or Data Services and Equipment including but not limited to cellular data services to hand-held devices, as well as required communications interface devices to State agencies and eligible entities throughout Texas.
- B. Optionally provide high-speed data services including Wi-Fi , Wi-Max, LTE, and other emerging technologies.
- C. Provide e-mail access services and support encrypted VPN access as required by each entity's data services.
- D. Optionally provide Wireless Voice and Data bundled applications that may be useful to State agencies and eligible entities.
- E. Satellite Phones - all phones must have U.S. numbers and be dedicated voice phones. Vendors must provide detailed information on the equipment, phone, accessories, option to adapt faxing capability, etc. offered by manufacturers name, model number etc. Vendors must include satellite carrier service rate plans for emergency use, monthly and annual usage. International calling or roaming service is not a requirement identified by DIR Customers but should be included in the event any DIR Customers have need for this service in the future. Where possible all appropriate satellite phone equipment accessories (case, car and wall chargers, spare batteries and emergency installation kits) should be included as a part of Vendors proposal.

2. Wireless Voice Services and Equipment Requirements

- A. Vendor shall describe the technology used to provide Wireless Voice and/or Data Services and Equipment in the coverage area.
- B. Vendor shall specify the coverage area provided for Wireless Voice and/or Data Services and Equipment in Texas, including which areas are primary coverage and which areas are ROAMING. The Vendor will provide a current, published list and corresponding coverage map indicating Texas zip codes where Vendor offers Wireless Voice Services operating and providing at least 95% reliability. Vendor shall detail Vendor's current expansion or upgrade plans for the proposed contract period (i.e., coverage, features, functionality, options, type of user equipment available, etc.).
- C. Vendor shall describe their organizational structure and detailed process for handling service, technical and billing problems/issues up to and including corporate management. Specific detail should be provided with respect to handling billing problems and avoidance of

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inappropriate fee or surcharge billing. Vendor must confirm this organizational structure and escalation procedure will be included, maintained and updated in a timely fashion on the Vendor's website.

- D. Vendors must have systems with ability to access 9-1-1 without incurring a cost to complete the call.
- E. Customers must have the option to obtain at least one set of each type of communications device on a loan basis and at no cost, for the purpose of evaluating services and system coverage for a period up to thirty (30) business days outside of their subscription coverage.
- F. Vendors must describe the process that users will follow to replace customer equipment due to damage, repair, theft, etc.
- G. Customers will be responsible for reporting lost or stolen wireless equipment. Vendor must have the ability to deactivate wireless equipment immediately upon receiving notice equipment is lost or stolen.
- H. Vendor must describe standard and optional call features.
- I. Vendors must state all equipment and services provided are in compliance with all rules and regulations of the FCC, PUC or other governmental or regulatory body with jurisdiction.
- J. Vendors desiring to provide optional or additional services for this RFO must provide detailed descriptions of these offerings. Vendors will provide pricing elements for these optional or additional offerings, as applicable, in Bid Package 2 of this RFO.
- K. Vendor shall provide details of enhanced range/performance devices that can be installed in a variety of applications to extend Wireless Data Access range beyond normal notebook or hand-held devices.

3. Wireless Data Access Service Requirements

- A. Vendor shall describe the technology used to provide Wireless Data Services in the coverage area.
- B. Customer shall have the ability to cancel service within a 30 day evaluation period with no termination penalty.
- C. Vendor shall specify the net end user usable data speed that will be delivered 95% of the time within 95% of the coverage area defined.

4. Access and VPN Support Requirements

- A. Vendor shall provide data channel support for customer provided encryption services to allow current customer VPN access mechanisms to function properly. Provide details of all types of VPN encryption modes currently operating successfully in the proposed Wireless Data Services.
- B. Vendor shall describe in detail all offered and supported e-mail access arrangements that are priced as service options.

5. Wireless Carrier Connectivity to DIR's Network

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- A. Vendor shall provide an overview of their solution to connect their wireless network to DIR's network as described in Section 2.2 Related Services
- B. Vendor shall describe SLAs, trouble ticket process for connecting its wireless network directly to the State's network

6. Wireless Carrier Signal Booster/Extender for Inside Buildings

- A. DIR customers are in need of an agnostic (network neutral) wireless cellular signal boosters to enhance signals inside buildings.
- B. System must provide signal enhancement for ALL wireless cellular signals
- C. System shall be compatible with current data signals including but not limited to, 2G, 3G, 4G and LTE data signals.

7. Service Support Requirements

- A. Vendor shall describe all Service Level Agreements (SLA) for the proposed Service (i.e., hours of operational service and support, response times to resolve problems, etc.). Describe any applicable credits associated with SLA's that are not met.
- B. Vendor shall identify its maintenance procedures for this service. Define the process for reporting service problems on a 7 day x 24 hour basis. Define whether maintenance is provided on a 7 day x 24 hour basis.
- C. Vendor shall provide toll free 24 hour per day telephone installation support for communications access devices and software required to access cellular data services.
- D. If the Vendor is a reseller of this service, Vendor will detail current and proposed procedures for resolution of problems between the reseller and the facilities-based provider. The Vendor will be responsible for problem resolution.
- E. Vendor will describe the web-based services accessible to each customer (agency or eligible entity) to examine billing, usage, performance and current coverage areas for the Customer.
- F. Vendor shall describe the web-based services accessible to DIR to examine summary data and customer level data for billing, usage, performance and current coverage areas for all Customers receiving services under the awarded contract.
- G. Vendor must provide documentation with each wireless telephone that relates to instruction on use of equipment and services. Vendors must have a 7-day x 24 hour customer assistance center accessed via a free call. Vendor will explain if equipment or services are available for the hearing or visually impaired, up to and including Braille instructions and/or equipment. Vendor must provide replacement documentation to customers as requested.
- H. Scheduled maintenance that will result in an outage requires an alert notification from Vendor to DIR of at least ten (10) business days, for Vendors providing a dedicated connection to the State of Texas network as described in Section 2.2. Related Services. Unscheduled services outages require immediate alert notification from Vendor to DIR. Also, whenever possible, any scheduled maintenance periods should be conducted during a maintenance window of midnight until 04:00 AM, preferably over weekends, beginning Friday night at 11:59

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PM and extending to Monday morning at no later than 04:00 AM. All alerts will be sent to the DIR Help Desk.

- I. Vendors will explain what security and fraud detection capabilities exist within their services. In addition to these requirements, Vendor must ensure services being offered will not interfere with the customer's mobile device management security requirements such as, but not limited to, device encryption, remote device wiping, etc.
- J. Vendor should describe its credit policies for disconnects, misdialed numbers, etc.
- K. Vendor must state time frames to activate new service and delivery equipment to the end user.
- L. Proposal evaluation will place special emphasis on Vendor's acceptable level of customer support. Vendor must be able to demonstrate the ability to provide satisfactory customer support for the life of the contract.

8. Pager Services and Equipment Requirements

- A. Vendor(s) must provide a coverage map of the State of Texas, United States and International areas. Respondent(s) must specify the coverage area provided for the pager services purposed. The Respondent(s) must provide a spreadsheet listing counties and zip code with coverage in the State of Texas. Respondent(s) must also indicate which zip codes and county pager services can be activated using local phone numbers for that zip code and county.
- B. Respondent(s) will describe all features purposed.
- C. Respondent(s) will identify all pager equipment purposed.
- D. Respondent(s) must describe their company's current expansion or upgrade plans for the proposed period. (i.e. coverage, features, functionality, type of units, etc.).
- E. Respondent(s) must describe the process and options available for upgrading equipment.
- F. Respondent(s) must have the ability to deactivate pager equipment immediately upon receiving notice equipment is lost or stolen.
- G. Respondent(s) must state that all equipment and services provided are in compliance with all rules and regulations of the FCC, PUC or other governmental or regulatory body with legislative authority.

9. Pagers Service Support Requirements

- A. Respondent(s) shall describe their approach to supporting this account, i.e., provide account team/support structure, problem escalation/resolution process, etc.
- B. Respondent(s) shall describe the Service Level Agreement for the proposed service. Describe any applicable credits associated with SLA's that are not met.
- C. Respondent(s) shall identify its maintenance procedures for this service. Define the process for reporting service problems on a 7 day X 24 hour basis. Define whether maintenance is provided on a 7 day X 24 hour basis.

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D. If Respondent(s) is a reseller of this service, Respondent will detail current and proposed procedures for resolution between the reseller and the service provider. The Respondent will be responsible for problem solution.

E. Respondent(s) will explain what security and fraud detection capabilities exist with their services.

10. Emerging Technologies

DIR recognizes that communications technologies and Services are rapidly evolving and advancing. DIR also understands that Vendors may be testing new technologies or developing new services that are not yet available to the public at the time of response to this RFO. Once these technologies are generally available, DIR desires to have the ability to amend the contracts awarded under this RFO to include these new technologies or service offerings.

In order to add these technologies to the awarded contracts in the future, the Vendor shall include in its Response any emerging technologies or emerging service offerings. These offerings must include a description of the offering and the offer must be within the scope of Wireless voice and Data, Pagers or Mobile Satellite voice services. Emerging Technologies and Services will only be added if the technology is within scope of the services awarded to the Vendor. DIR may award the Emerging Technologies service within one or more of the other Service Categories awarded to a Vendor, in DIR's sole and absolute discretion.

Once the emerging technology or service offering becomes generally available, it will be DIR's sole and absolute discretion whether or not to amend the contract to include the emerging technology or service offering.

11. Pricing and Billing Information Requirements

Vendors proposing Wireless Voice and/or Data Services and Equipment must provide pricing as specified in the attached Bid Package 2. All pricing provided must be stated in terms of the percent discount from retail prices. Vendors must include their proposed service plans, costs for service (one-time and recurring), features included in proposed plans, and optional features that can be added on to the service plans. Vendor shall disclose any applicable telecommunications taxes, fees and surcharges in Bid Package 2, Pricing Index. **Failure to disclose such taxes, fees and surcharges in Bid Package 2, Pricing Index, waives these taxes, fees and /or surcharges under the Contract.**

19) Proof of Financial Stability.

All Vendors responding to this RFO and all Vendors that will enter into a contract with DIR must be and remain current in payment of all taxes, including Sales and Franchise Taxes. In general, the Comptroller of Public Accounts must identify the Vendor to be "in good standing" and a Vendor with which the state is authorized to do business.

Vendors must provide a Dun and Bradstreet D-U-N-S number. The D-U-N-S number MUST be included in the Vendor's response. **Failure to include the D-U-N-S number listed for the company shall cause automatic rejection of the response.**

**DUNS No.** \_\_\_\_\_

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20) Officer or Agent empowered to contractually bind the Vendor:

Name:  
Title:  
Address:  
Phone Number:  
Fax:  
Email:

21) **Statement of Compliance**

A. Checklist for the RFO

The following checklist is provided for the convenience of Vendors in their response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFO. Vendors must ensure that all mandatory requirements for this RFO are met, even if they are not included in this checklist. The mandatory documentation must be submitted with the original and each copy of the response.

A completed checklist shall not be binding on DIR's administrative review for compliance with the mandatory response contents specified in this RFO. As step one of the evaluation process, DIR will review all responses to ensure compliance with the mandatory response contents as specified in Section 3.7.3. of the RFO and reject any response that does not comply.

**All responses must be received by DIR on or before 2:00 pm (CT) on January 22, 2016. No late responses will be reviewed.**

Item	Check
Response addressed to: Department of Information Resources 300 W. 15th Street, Suite 1300 Austin, Texas 78701 Attn: Carrie Cooper	
External packaging references "RFO DIR-TSO-TMP-234"	
Package contains one (1) signed original (clearly marked) of the complete response with one (1) signed original HUB Subcontracting Plan	
Package contains one (1) additional signed original HUB Subcontracting Plan in a separate envelope	
Package contains three (3) clearly marked additional thumb drive copies of the complete response	
Package contains one (1) thumb drive containing any and all response materials which Vendor asserts are confidential or proprietary (if required)	
Package contains one (1) thumb drive containing any and all copyrighted materials in the Vendor's response (if required)	
Package contains one (1) thumb drive containing any and all copyrighted materials in the Vendor's response (if required)	
Paper responses are bound and the cover of the binders reference "DIR-TSO-TMP-234" and include the name and address of the responding Vendor	
<b>Mandatory Response Contents</b>	
Vendor Information - Exhibit A	
Contract Support Plan – Exhibit B	
HUB Subcontracting Plan Forms – Appendix C	
Product and Services Pricing – Bid Package 2	
Services Description and Pricing – Bid Package 2	
Vendor Reference Forms (3) – Bid Package 5 (to be emailed by reference)	

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Exhibit A  
Vendor Information Form

Policy-Driven Adoption for Accessibility – Bid Package 6	
Software License Agreement and/or Service Agreement	
Manufacturer Letter of Authorization if applicable	

B. Certification Statement

The undersigned hereby certifies on behalf of insert company name here that RFO DIR-TSO-TMP-234 has been read and understood. In submitting its response insert company name here represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- iv) as of the date of signature below, Vendor is not listed in the prohibited Vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control;
- v) 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;
- vi) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- vii) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
- viii) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;
- ix) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- x) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- xi) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award;
- xii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- xiii) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
- xiv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;
- xv) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;
- xvi) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;
- xvii) Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements); and

Exhibit A  
Vendor Information Form

xvii) Vendor agrees that these representations will be incorporated into any subsequent agreement(s) between Vendor and Customer that result from this RFO.

---

Signature of Officer or Agent empowered to contractually bind the Vendor

---

Date

## Exhibit B Contract Support Plan

**Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded. The plan must include the information listed below.**

- 1) Describe your company's strategy for marketing and selling the products/services listed in this RFO to eligible DIR Customers.
- 2) Describe your company's strategy for providing sales, order processing, and support of eligible DIR Customers throughout the State of Texas.
- 3) Provide the projected total sales of the products and services listed in this RFO that your company anticipates making to eligible DIR Customers within the next 12 months. If available, show the projected sales breakdown between the following segments: State and Local Governments, Higher Education, and K-12.
- 4) If your company is a manufacturer or publisher naming Order Fulfillers, provide the information listed below for each proposed Order Filler. **Proposed Order Fulfillers listed below must also be included in Appendix C, Vendor's Historically Underutilized Plan (HSP).**
  - a) Order Filler name, address, and contact
  - b) Comptroller of Public Accounts Vendor Identification number
  - c) CPA HUB ethnicity/gender, if applicable
  - d) Roles and responsibilities of Order Filler.

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Request for Offer DIR-TSO-TMP-234

Instructions	
1	For the purposes of this RFO, an administrative fee of two percent (2%) shall be used in calculating the Customer Discount.
2	Vendors proposing wireless voice and data services should propose a single discount off nationally available plans.
3	Vendors must disclose all government mandated telecommunications fees, surcharges, assessments, etc. that may be charged to the State or its customers for each service proposed. Vendor must disclose the monthly amount charged for each service either by dollar amount or percentage of the monthly charges. Vendors will state their intent to either absorb these fees or pass these fees onto the end users. Vendors not electing to absorb these fees must provide a price cap on these charges which will be honored throughout the term of the contract. If Vendor does not disclose this fee information in their response to the RFO, the undisclosed fees or costs will not be reimbursed under the resulting contract. DIR reserves the right to negotiate the application of any undisclosed fees to its customers. DIR or its eligible Customers will not pay for any additional fees other than those mandated by the FCC, PUC, federal legislation or other governmental or regulatory body with jurisdiction and incorporated into the DIR contract. DIR will verify whether any disclosed taxes, fees and/or surcharges are applicable to its Customers prior to including in any resulting Contract.
4	Proposed pricing shall be acceptable for 120 days from the date of the response submittal.
<b>Pricing and Billing Information Requirements</b>	
<b>For Wireless Voice</b>	
	Vendors proposing Wireless Voice Services and Equipment must provide pricing for a Basic Monthly Service Plan, Service Options and Other Options proposed in the following format. All pricing provided must be stated in terms of the percent discount from current retail prices. Vendors must include their proposed service plans, costs for service (one-time and recurring), features included in proposed plans, and optional features that can be added on to the service plans. Vendors must state activation/deactivation fees will not be charged for new lines or service, equipment upgrades or mobile number portability. Recurring charges should include all monthly costs for services. Additional charges should include costs for roaming, long distance, or other costs not included in the monthly charges. Vendors may include as many service offerings as desired. Vendor must include the two (2%) percent administrative fee payable to DIR on any of these Service Options.
	Use additional space as needed to list all Service Options.
<b>For Wireless Data</b>	
	Vendors proposing Wireless Data Services and Equipment must provide pricing for service rate plans, monthly allowance per company account, overage rate per KB, monthly charge for voice add-on per company account, monthly charge for data only per company account and roaming rate per KB.

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1	Lowest monthly cost for data services, plus the rate per unit and unit size for data usage.
2	Monthly cost for unlimited data usage.
3	Cost for each type of data communications access device offered (PC cards, etc.). If applicable, provide both one time costs and "bundled" lease cost for access devices.
4	Costs associated with each e-mail access service offered.
	<b><i>Additional Pricing Requirements</i></b>
1	Costs, if applicable, for additional data and applications devices or services offered.
2	Any other cost components applicable to the services offered.
3	DIR desires to receive additional discounts based on reaching a proposed total sales volume through these contracted services. Vendor shall describe the additional percentage discount available and the quantity of sales required to achieve those discounts.
4	List discounts available to replace phones. For example, lost, stolen or inoperable phones.
5	List discounts available for upgrading equipment. For example, new handsets with new features, new technology or model changes.
6	List the percentage discount for all accessories.
7	Vendor must include the following information on its monthly bills to customers for wireless activity. Bills will provide, at a minimum, the following information:
7a	Customer code
7b	User name
7c	Retail Service Rate
7d	Discount
7e	Rate customer pays after the discount is applied
7f	Itemized surcharges
7g	Identified rate plan for individual users
7h	Call detail will identify outbound terminating call location or incoming call origination number with date, time and length of call.
7i	Roaming detail will include the identity of the roaming location from which calls are made
8	Vendors must disclose all government mandated telecommunications fees, surcharges, assessments, etc. that may be charged to the State or its customers for each service proposed. Vendor must disclose the monthly amount charged for each service either by dollar amount or percentage of the monthly charges. Vendors will state their intent to either absorb these fees or pass these fees onto the end users. Vendors not electing to absorb these fees must provide a price cap on these charges which will be honored throughout the term of the contract. If Vendor does not disclose this fee information in their response to the RFO, the undisclosed fees or costs will not be reimbursed under the resulting contract. DIR reserves the right to negotiate the application of any undisclosed fees to its customers. DIR or its eligible Customers will not pay for any additional fees other than those mandated by the FCC, PUC, federal legislation or other governmental or regulatory body with jurisdiction and incorporated into the DIR contract. DIR will verify whether any disclosed taxes, fees and/or surcharges are applicable to its Customers prior to including in any resulting Contract.

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9	Current DIR contracts do not allow for the Vendor's cost recovery fee to be charged to customers. Vendor must state its intent to absorb this fee.
	<b><i>Additional Pricing and Billing Information Requirements</i></b>
1	Vendor will submit a sample copy of a Customer bill for this service. Billing format will be on a per line basis, providing the circuit/telephone number and the address at which it terminates (including zip code). The bill will also contain customer name, all options listed individually, and one-time charges listed individually, clearly detailing individual charges.
2	Vendor will provide each Customer the option of billing by cost center, where each wireless device is assigned to a cost center.
3	Vendor Customer rates for all wireless products and services will include a two (2%) percent administrative fee. This fee will not be separately identified on the customer bill. Vendors will directly bill the eligible Customer for wireless products and services and remit two (2%) percent of the sales revenue monthly to DIR as a contract administration fee.
4	Vendor will provide DIR with a monthly billing summary, by customer, for all products and services provided to State agencies and eligible entities.
5	All DIR eligible customers are exempt from state and local sales tax and federal excise taxes. Vendors shall not bill inapplicable taxes to customers.

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WIRELESS VOICE PLANS ONLY			
Types of Service/Equipment/Fees/Rate Plan	Published Rates	% Discount Off Published Rates Offered to the State	Minutes Included
<b>Basic Monthly Service:</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 1</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 2</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			

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Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 3</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>LIST OTHER OPTIONS AS DESIRED</b>			

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WIRELESS DATA PLANS ONLY				
Types of Service/Equipment/Fees/Rate Plan	Published Rates	Overage Rate Per Kb	% Discount Off Published Rates Offered to the State	Roaming Rate Per Kb
<b>Basic Monthly Service:</b>				
Describe Equipment, Features and Commitments				
List All:				
Recurring Charges				
Non-recurring Charges				
Additional charges that are not included above, (roaming, long distance, etc.)				
Optional Features:				
List all optional Features with recurring or one-time charges.				
<b>Service Option 1</b>				
Describe Equipment, Features and Commitments				
List All:				
Recurring Charges				
Non-recurring Charges				
Additional charges that are not included above, (roaming, long distance, etc.)				
Optional Features:				
List all optional Features with recurring or one-time charges.				
<b>Service Option 2</b>				
Describe Equipment, Features and Commitments				
List All:				
Recurring Charges				
Non-recurring Charges				
Additional charges that are not included above, (roaming, long distance, etc.)				
Optional Features:				
List all optional Features with recurring or one-time charges.				
<b>Service Option 3</b>				
Describe Equipment, Features and Commitments				
List All:				
Recurring Charges				
Non-recurring Charges				
Additional charges that are not included above, (roaming, long distance, etc.)				
Optional Features:				
List all optional Features with recurring or one-time charges.				
<b>LIST OTHER OPTIONS AS DESIRED</b>				

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Department of Information Resources  
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WIRELESS VOICE AND DATA PLANS ONLY					
Types of Service/Equipment/Fees/Rate Plan	Published Rates	% Discount Off Published Rates Offered to the State	Minutes Included	Overage Rate Per Kb	Roaming Rate Per Kb
<b>Basic Monthly Service:</b>					
Describe Equipment, Features and Commitments					
List All:					
Recurring Charges					
Non-recurring Charges					
Additional charges that are not included above, (roaming, long distance, etc.)					
Optional Features:					
List all optional Features with recurring or one-time charges.					
<b>Service Option 1</b>					
Describe Equipment, Features and Commitments					
List All:					
Recurring Charges					
Non-recurring Charges					
Additional charges that are not included above, (roaming, long distance, etc.)					
Optional Features:					
List all optional Features with recurring or one-time charges.					
<b>Service Option 2</b>					
Describe Equipment, Features and Commitments					
List All:					
Recurring Charges					
Non-recurring Charges					
Additional charges that are not included above, (roaming, long distance, etc.)					
Optional Features:					
List all optional Features with recurring or one-time charges.					
<b>Service Option 3</b>					
Describe Equipment, Features and Commitments					
List All:					
Recurring Charges					
Non-recurring Charges					
Additional charges that are not included above, (roaming, long distance, etc.)					
Optional Features:					
List all optional Features with recurring or one-time charges.					
<b>LIST OTHER OPTIONS AS DESIRED</b>					

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PAGER PLANS ONLY			
Types of Service/Equipment/Fees/Rate Plan	Published Rates	% Discount Off Published Rates Offered to the State	Minutes Included
<b>Basic Monthly Service:</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 1</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 2</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 3</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			

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List all optional Features with recurring or one-time charges.			
<b>LIST OTHER OPTIONS AS DESIRED</b>			

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SATELLITE PHONE PLANS ONLY			
Types of Service/Equipment/Fees/Rate Plan	Published Rates	% Discount Off Published Rates Offered to the State	Minutes Included
<b>Basic Monthly Service:</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 1</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 2</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			
List all optional Features with recurring or one-time charges.			
<b>Service Option 3</b>			
Describe Equipment, Features and Commitments			
List All:			
Recurring Charges			
Non-recurring Charges			
Additional charges that are not included above, (roaming, long distance, etc.)			
Optional Features:			

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List all optional Features with recurring or one-time charges.			
<b>LIST OTHER OPTIONS AS DESIRED</b>			

NETWORK NEUTRAL CELLULAR SIGNAL BOOSTERS			
Hardware	MSRP/List Price	% Discount Off MSRP/List Price Offered to the State	Price to Customer
Vendor should provide a list of all signal boosters with respective pricing			
Services			
Vendor should provide a list of services associated with the purchase of hardware			

## Telecommunicaitons Taxes, Fees and Surcharges

[illegible]

**Cover Page to Bid Package 3 for RFO**

**DIR-TSO-TMP-234**

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
  
***VENDOR NAME***

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and *VENDOR NAME* (hereinafter “Vendor”), with its principal place of business at *VENDOR ADDRESS*.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-XXX, on *POSTING DATE*, for *NAME OF RFO*. *DIR subsequently issued a BAFO opportunity on BAFO DATE*. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-XXX shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-XXX, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-XXX, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-XXX, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-XXX, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and

finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then Appendix E or Appendix F, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

## 2. Term of Contract

The term of this Contract shall be 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 beyond the expiration of the contract.

## 3. Product and Service Offerings

### A. Products

Products available under this Contract are limited to *insert product description here* 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 *insert **SPECIFIC** services here* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

### C. Emerging Technologies and Future Acquisitions

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice services. Vendor may propose such products or services throughout the term of the contract as long as said product or service was initially bid in Vendor's response. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR's sole discretion and any decision will be final.

## 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. Telecommunications Fees, Taxes, and

Surcharges may not be included on Customer invoices unless they were submitted with response and verified as required by statute.

**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 2 percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$*insert dollars*.

**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:

Shannon Kelley, CTPM, CTCM  
 Manager, Enterprise Contracts  
 Department of Information Resources  
 300 W. 15<sup>th</sup> St., Suite 1300  
 Austin, Texas 78701  
 Phone: (512) 936-2233  
 Facsimile: (512) 475-4759  
 Email: shannon.kelley@dir.texas.gov

If sent to the Vendor:

*Vendor Representative*  
*Company Name*  
*Address*  
*City, State Zip*  
 Phone: ( ) -  
 Facsimile: ( ) -  
 Email:

**7. Software License, Service and Leasing Agreements**

**A. Software License Agreement**

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order

Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.

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

**B. Shrink/Click-wrap License Agreement**

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

**C. Service Agreement**

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix E of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

**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.

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

***VENDOR NAME***

**Authorized By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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

**Authorized By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Office of General Counsel:** \_\_\_\_\_

**Cover Page for Bid Package 4 to RFO**

**DIR-TSO-TMP-234**

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

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## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

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

#### **1. Contract Scope**

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

#### **2. No Quantity Guarantees**

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

#### **3. Definitions**

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, 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 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.

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### **Standard Terms and Conditions For Product and Related Services Contracts**

- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

#### **4. General Provisions**

##### **A. Entire Agreement**

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

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

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

##### **C. Invalid Term or Condition**

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

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

#### **D. Assignment**

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

#### **E. Survival**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract. Rights and obligations under this Contract which by their nature should survive, including, but not limited to any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

#### **F. Choice of Law**

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

#### **G. Limitation of Authority**

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

#### **H. Proof of Financial Stability**

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

### **5. Intellectual Property Matters**

#### **A. Definitions**

1) "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all

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### **Standard Terms and Conditions For Product and Related Services Contracts**

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

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### **Standard Terms and Conditions For Product and Related Services Contracts**

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

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### **Standard Terms and Conditions For Product and Related Services Contracts**

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.**

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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

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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**

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

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

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

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

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

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

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

#### **7. Contract Fulfillment and Promotion**

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#### **A. Service, Sales and Support of the Contract**

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

#### **B. Use of Order Fulfillers**

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

##### **1) Designation of Order Fulfillers**

- a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Filler information: Order Filler name, Order Filler business address, Order Filler CPA Identification Number, Order Filler contact person email address and phone number.
- b) DIR reserves the right to require the Vendor to rescind any such Order Filler participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.
- d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.
- e) Vendor shall not prohibit Order Filler from participating in other procurement opportunities offered through DIR.

##### **2) Changes in Order Filler List**

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

##### **3) Order Filler Pricing to Customer**

Order Filler pricing to the Customer shall comply with the Customer price as stated

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### **Standard Terms and Conditions For Product and Related Services Contracts**

within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

#### **C. Product Warranty and Return Policies**

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

#### **D. Customer Site Preparation**

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

#### **E. Internet Access to Contract and Pricing Information**

##### **1) Vendor Website**

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include the product and services offered, product and service specifications, specific contract pricing expressed in dollars as well as discount off MSRP or List Price, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

##### **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) Website Compliance Checks**

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

##### **4) Website Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website 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

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### **Standard Terms and Conditions For Product and Related Services Contracts**

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**

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

### **G. Vendor and Order Fulfiller Logo**

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

### **H. Trade Show Participation**

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

### **I. Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers

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

#### **J. Performance Review Meetings**

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor 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, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

### **8. Pricing, Purchase Orders, Invoices, and Payments**

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

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**

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**

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.

2) 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

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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. Telecommunication Fees and Surcharges and Taxes**

Any FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed if the Vendor listed them in Bid Package 2 upon submission of Offer. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

(b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.

(c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government

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Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

#### **E. Other Fees**

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

#### **F. Back-billing**

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.

#### **G. DIR Cost Recovery Fee**

The DIR Cost Recovery Fee (CRF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the CRF to recover its costs in accordance with the statute. The initial rate for the CRF is set forth in Section 5 Contract. The DIR CRF specified in Section 5 of the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

#### **H. Shipping and Handling Fees**

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.

#### **I. Tax-Exempt**

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).

#### **J. Travel Expense Reimbursement**

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

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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.

#### **K. 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.

- 1) Price increase or decrease change requests must be requested with a signed cover letter indicating the change in price. Price increase requests must be accompanied by a copy of the manufacturer or publisher's price list.
- 2) Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.
- 3) Requests for price increases will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Increases that are not accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted increase is rejected, Vendor may request that the product or service rejected be removed from the Contract. The product or service will be removed from the Contract upon execution of a written Contract amendment, which shall be transmitted to Vendor by DIR within thirty (30) calendar days after receipt of the written request to remove the product or service and executed by both parties without undue delay. Existing pricing must be honored up to the date of execution of the Contract amendment. Prices may not be increased for at least ninety (90) calendar days after the contract start date. Price reductions will be accepted at any time.

#### **L. Purchase Orders**

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

#### **M. Invoices**

- 1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.
- 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.

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**N. Payments**

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

**9. Contract Administration**

**A. Contract Managers**

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

**B. Reporting and Administrative Fees**

**1) Reporting Responsibility**

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

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract books at DIR's expense.

**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 shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. If the 15<sup>th</sup> 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,

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quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the administrative fee due for the reporting period, 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.

#### **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) An administrative fee shall be paid by Vendor 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. Payment of the administrative fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. 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.

b) 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 DIR's expense.

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**

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or

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

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

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

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

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**D. Contract Administration Notification**

- 1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.
- 2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts E-Mail Box information.

**10. Vendor Responsibilities**

**A. Indemnification**

**1) INDEPENDENT CONTRACTOR**

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

**2) Acts or Omissions**

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

**3) Infringements**

- a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE

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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.

**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

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**C. Vendor Certifications**

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

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health

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and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;

- (x) 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;
- (xi) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xii) have identified all current or former, within the last five years, employees of the State assigned to work on the DIR Contract 20% or more of their time and have disclosed them to DIR and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xiii) 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;
- (xiv) under Section 2155.006, 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;
- (xv) 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
- (xvi) 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.

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

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

**D. Ability to Conduct Business in Texas**

Vendor and its Order Filler 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.

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#### **E. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **F. Use of Subcontractors**

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. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

#### **G. Responsibility for Actions**

- 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 Appendix A to the RFO and/or Section 10.C. (xii) and (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 employment of current or former State employees and their relatives and/or the status of conflicts of interest.

#### **H. Confidentiality**

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

#### **I. Security of Premises, Equipment, Data and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the

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### **Standard Terms and Conditions For Product and Related Services Contracts**

Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as “Data”) belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

#### **J. Background and/or Criminal History Investigation**

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

#### **K. Limitation of Liability**

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

#### **L. Overcharges**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

#### **M. Prohibited Conduct**

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

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### **Standard Terms and Conditions For Product and Related Services Contracts**

indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

#### **N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A rated by A.M. Best, 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 a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. 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;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

##### **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 POLICY LIMIT AND \$1,000,000 PER DISEASE PER EMPLOYEE.**

##### **3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired

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### **Standard Terms and Conditions For Product and Related Services Contracts**

vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

#### **O. Use of State Property**

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

#### **P. Immigration**

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.

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

#### **Q. Public Disclosure**

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

#### **R. Product and/or Services Substitutions**

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

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

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

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product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

#### **T. Deceptive Trade Practices; Unfair Business Practices**

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

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

#### **U. Drug Free Workplace Policy**

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **V. Accessibility of Public Information**

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

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

#### **W. Vendor Reporting Requirements**

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

### **11. Contract Enforcement**

#### **A. Enforcement of Contract and Dispute Resolution**

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

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

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 §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

#### **B. Termination**

##### **1) Termination for Non-Appropriation**

###### **a) Termination for Non-Appropriation by Customer**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

###### **b) Termination for Non-Appropriation by DIR**

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

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### **Standard Terms and Conditions For Product and Related Services Contracts**

#### **2) Absolute Right**

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 by giving the other party thirty (30) calendar days written notice.

#### **4) Termination for Cause**

##### **a) Contract**

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

##### **b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order 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 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 Purchase Order.

#### **5) Customer Rights Under Termination**

In the event the Contract expires or is terminated for any reason, a Customer shall retain

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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.

**6) Vendor or Order Fulfiller Rights Under Termination**

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

**C. Force Majeure**

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

**12. Notification**

**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. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**13. Captions**

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

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any provision thereof.



## **BID PACKAGE 5**

### **Department of Information Resources**

#### **Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice DIR-TSO-TMP-234**

#### **Vendor References**

VENDOR REFERENCES  
for the Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice RFO Number  
**DIR-TSO-TMP-234**  
REFERENCE DEADLINE TO DIR: No later than January 12, 2016 – 2:00 pm CT

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request For Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: [WirelessRFOReferences@dir.texas.gov](mailto:WirelessRFOReferences@dir.texas.gov)

**This portion to be completed by the Vendor requesting reference information**

Vendor Name \_\_\_\_\_  
Prime Contractor \_\_\_\_\_  
Subcontractor(s) \_\_\_\_\_  
Dates of Performance: Starting Date \_\_\_\_\_ Ending Date \_\_\_\_\_  
Total Est. Contract Dollar Amount \_\_\_\_\_

**This portion to be completed by the Customer providing reference and returned to DIR at reference email address [WirelessRFOReferences@dir.texas.gov](mailto:WirelessRFOReferences@dir.texas.gov)**

Rating: (0) Unsatisfactory; (1) Marginal Satisfactory; (2) Satisfactory; (3) Exceeds Expectations; N/A. Not Applicable  
Definitions for each rating category are contained on the following page.

Please provide your opinion by rating the following:

**Quality of Service**

1. Effectiveness in identifying user requirements	0.____ 1.____ 2.____ 3.____ N/A____
2. Effectiveness in accomplishing performance metrics	0.____ 1.____ 2.____ 3.____ N/A____
3. Identified risk factors and alternatives for alleviating risk	0.____ 1.____ 2.____ 3.____ N/A____
4. Effective logistics support (services, personnel)	0.____ 1.____ 2.____ 3.____ N/A____
6. Technical qualifications of contractor personnel	0.____ 1.____ 2.____ 3.____ N/A____
7. Technical qualifications of subcontractor personnel	0.____ 1.____ 2.____ 3.____ N/A____

**Cost**

8. Accurately estimated and controlled costs to complete work	0.____ 1.____ 2.____ 3.____ N/A____
9. Timely, current, accurate & complete invoices	0.____ 1.____ 2.____ 3.____ N/A____

**Timeliness of Performance**

10. Adherence to delivery schedule (major tasks, milestones)	0.____ 1.____ 2.____ 3.____ N/A____
11. Provided timely technical assistance, on-site & off-site	0.____ 1.____ 2.____ 3.____ N/A____
12. Timely, current & complete reporting, tracking & documentation	0.____ 1.____ 2.____ 3.____ N/A____

**Business Relations & Customer Satisfaction**

13. Effectively managed, coordinated & integrated subcontractors	0.____ 1.____ 2.____ 3.____ N/A____
14. Effectively communicated with customer management & staff	0.____ 1.____ 2.____ 3.____ N/A____
15. Personnel (professional, cooperative & flexible)	0.____ 1.____ 2.____ 3.____ N/A____
16. Subcontractor personnel (professional, cooperative & flexible)	0.____ 1.____ 2.____ 3.____ N/A____
17. Overall Satisfaction with Prime Contractor	0.____ 1.____ 2.____ 3.____ N/A____
18. Overall Satisfaction with Subcontractor(s)	0.____ 1.____ 2.____ 3.____ N/A____

**Comments: (Please use additional page if necessary)**

Would you use this Vendor for future Wireless, Pager or Satellite Voice Services? Yes\_\_\_\_ No\_\_\_\_

Rater's Name: \_\_\_\_\_ Date: \_\_\_\_\_

Organization: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email address: \_\_\_\_\_

## Vendor Reference Evaluation Scoring

<b>Excellent (3)</b> There are no quality problems. There are no cost issues. There are no delays. Responses to inquiries, technical, service, and administrative issues are effective and responsive.			
<b>Satisfactory (2)</b> Nonconformances do not impact achievement of contract requirements. Cost issues do not impact achievement of contract requirements. Delays do not impact achievement of contract requirements. Response to inquiries, technical, service, and administrative issues is usually effective and responsive.			
<b>Marginal (1)</b> Nonconformances require minor Agency resources to ensure achievement of contract requirements. Cost issues require minor Agency resources to ensure achievement of contract requirements. Delays require minor Agency resources to ensure achievement of contract requirements. Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.			
<b>Unsatisfactory (0)</b> Nonconformances are compromising the achievement of contract requirements. Cost issues are compromising performance of contract requirements. Delays are compromising the achievement of contract requirements. Response to inquiries, technical, service, and administrative issues is not effective and responsive.			
<b>Not Applicable (0)</b> “does not apply” in the response to the question or request for information.			



**Department of Information Resources**

**Request for Offer  
DIR-TSO-TMP-234**

***Software, Hardware and Services for Wireless  
Voice, Data, Pagers and Mobile Satellite Voice***

**Bid Package 6**

## **FREQUENTLY ASKED QUESTIONS (FAQ) for Policy-Driven Adoption for Accessibility (PDAA)**

### **For Companies/Vendors**

#### **1. What is PDAA?**

Policy-driven Adoption for Accessibility (PDAA) is a tool that Vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles:

- Integrating accessibility policies and practices into their business and culture enables organizations to drive themselves towards the creation of accessible offerings over the long term.
- Enabling products for accessibility requires integrating accessibility criteria into all phases of a product life cycle, and other business processes where accessibility plays a role.
- Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards. Gaps in Vendor internal governance systems and leadership commitment inhibit their ability to meet these standards.
- Agency procurement organizations need assurances that Vendors have the ability to produce accessible offerings and continue to improve them over time.

#### **2. Why are buying organizations requesting information on company accessibility policy?**

Making an organization's information and communications technology (ICT) offerings accessible to people with disabilities requires commitment in many areas of that organization. PDAA data helps buying organizations understand a Vendor's accessibility policy, progress and commitment to accessibility holistically.

A mature accessibility policy implementation signals that the Vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the Vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning consistently results in a friendlier product for all users, including those with disabilities.

#### **3. Why is PDAA information important to the buying organization?**

The requested information provides insight into Vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings, which can increase the procuring organizations' confidence in the accuracy of Vendor's accessibility documentation.

Current ICT accessibility reporting formats such as VPATs (Voluntary Product Assessment Templates) only apply to COTS products and services. In many cases, Vendor VPATs lack credibility due to limited knowledge about their offerings' accessibility. Additionally, there is no standard reporting format for non-COTS offerings such as development services for websites, web applications, system software, etc.

#### **4. How will this information be used?**

The initial completed form will establish a baseline for where a vendor stands with regard to its ICT accessibility policy. The baseline illustrates the depth and maturity of the Vendor's support for accessibility policy and practices as illustrated via the PDAA Maturity Model (Link on next line. If prompted for a password, select "cancel")

[PDAA Maturity Model \(http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA\\_Maturity\\_Matrix.pptx\)](http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA_Maturity_Matrix.pptx)

The questionnaire may also be included in future solicitations so that progress can be assessed. The Vendor responses from the questionnaire may be considered as an element in Vendor selection; however, this would be determined by the procuring organization. Additionally, Vendor companies can use the results as a roadmap for implementing their organization-wide ICT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.

**5. We already submit VPATs as part of solicitation responses. Is that adequate?**

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. The expectation is that organizations with mature approaches to PDAA will greatly improve the levels of accessibility in products. It should also result in well documented, accurate VPATs, improving their value in product-level assessments.

**6. What is the PDAA Maturity Model?**

Based on the Capability Maturity Model (CMM) concept, the PDAA Maturity Model(Link on next line) provides buying organizations and vendors with a simple dashboard or matrix to track and demonstrate Vendors' progress toward full system-wide support of accessibility.

[PDAA Maturity Model \(http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA\\_Maturity\\_Matrix.pptx\)](http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA_Maturity_Matrix.pptx)

**7. Where can I obtain more information on Accessibility Policy implementation for my organization?**

[Additional information can be found on the PDAA web pages. \(http://www2.dir.state.tx.us/management/accessibility/tools/Pages/ProcurementTools.aspx\)](http://www2.dir.state.tx.us/management/accessibility/tools/Pages/ProcurementTools.aspx)

**For government organizations/agencies**

**8. What is PDAA?**

Policy-driven Adoption for Accessibility (PDAA) is a tool that Vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles:

- Integrating accessibility policies and practices into their business and culture enables organizations to drive themselves towards the creation of accessible offerings over the long term.
- Enabling products for accessibility requires the integration of accessibility criteria in all phases of a product life cycle, and other business process where accessibility plays a role.
- Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards, but gaps in internal governance and commitment by industry inhibits the adoption and implementation of these standards.
- Agency procurement organizations need assurances that Vendors have the ability to produce accessible offerings and continue to improve them over time.

**9. Does the PDAA replace VPATs?**

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. VPATs are still a valuable tool at the product level, and the expectation is that Vendors with mature approaches to PDAA will have accurate and informative VPATs.

**10. Why a “maturity model” of evaluation?**

Successfully enabling an organization for ICT accessibility requires implementation within various areas of an organization. As with any organization-wide initiative, implementation cannot occur all at once. The PDAA Maturity Model is used to gauge progress towards the complete implementation of PDAA core criteria. (Link on next line. If prompted for a password, select "cancel")

[PDAA Maturity Model \(http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA\\_Maturity\\_Matrix.pptx\)](http://www2.dir.state.tx.us/SiteCollectionDocuments/IT%20Leadership/EIR%20Accessibility/PDAA_Maturity_Matrix.pptx)

**11. Why should we support Vendors who have mature PDAA practices?**

A mature accessibility policy implementation signals that the Vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the Vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning consistently results in a friendlier product for all users, including those with disabilities.

**12. How should we score PDAA information?**

In general, the PDAA questionnaire is meant to ensure that the same information is collected from all bidders, and how the agency uses that information will depend on circumstances.

While scoring has not yet been established for PDAA, the responses from the questionnaire may be used as criteria in selecting offerings or Vendors. PDAA evaluation is an area that will need some practical experience, and we hope that organizations will share what they learn.

**13. Where does the PDAA information fit within the procurement process?**

Using consistent information in evaluating bids is a key element of open and competitive public procurements. The information given in a PDAA report can help you better judge the ability of a Vendor to: complete a VPAT correctly, produce accessible custom ICT offerings (web sites, web applications, software, etc.), resolve accessibility defects when discovered, and otherwise be a partner in helping you meet your compliance obligations. The specific role of PDAA responses may be determined in part by the procurement laws, policies and practices for your organization.

**14. What happens if the Vendor claims the information is confidential or a trade secret?**

Vendors often claim this for information required in procurements. Your organization’s procurement laws, policies, or practices may already address how you handle such claims.

**15. What other states are using the PDAA model?**

The PDAA model is in its early stages. A coalition of states is working with several national associations to harmonize the criteria for this model, and for obtaining and evaluating PDAA information. The goal is for more states and other government entities to adopt the PDAA model in their procurement processes.

**16. Where can I obtain more information on Accessibility Policy implementation for my organization?**

[Additional information can be found on the PDAA web pages. \(http://www2.dir.state.tx.us/management/accessibility/tools/Pages/ProcurementTools.aspx\)](http://www2.dir.state.tx.us/management/accessibility/tools/Pages/ProcurementTools.aspx)

Or contact the Statewide EIR Accessibility Coordinator at:

[statewideaccessibilitycoordinator@dir.texas.gov](mailto:statewideaccessibilitycoordinator@dir.texas.gov)



Vendor ICT Accessibility Policy Assessment

This Information and Communications Technology (ICT) accessibility assessment is for Vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations. Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment is not a substitute for other requested accessibility information such as VPATs. All questions, inquiries, etc. should only be directed to Carrie Cooper: Phone: 512-936-2353 Fax: 512-936-6896 Email: carrie.cooper@dir.texas.gov

Organization information

Organization Business Name: \_\_\_\_\_  
Organization Business Address: \_\_\_\_\_  
Point of Contact Information: Name \_\_\_\_\_ Telephone \_\_\_\_\_ Email \_\_\_\_\_  
Date of assessment completion: \_\_\_\_\_

My organization is a (choose one or more if applicable)

- ☐ Manufacturer: My organization develops and sells its own ICT products / services
- ☐ Service Provider: My organization sells IT development services
- ☐ Integrator: My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
- ☐ Reseller or Distributor: Does not develop or have its own products, but offers COTS 3rd party products

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant to your organization today.

Responses	<b>1. Develop, implement, and maintain an ICT accessibility policy.</b>
	0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)
	<b>1a. Having an ICT accessibility policy.</b>
	1 My organization is developing an ICT accessibility policy.
	2 My organization is finalizing an ICT accessibility policy.
	3 My organization has approved an ICT accessibility policy.
	<b>1b. Having appropriate plans in place to implement and maintain the policy.</b>
	1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
	2 My organization has completed planning for initial implementation and maintenance of our accessibility policy.
	3 My organization has approved plans for accessibility policy implementation and maintenance.
	<b>1c. Establishing metrics and tracking progress towards achieving compliance to the policy.</b>
	1 My organization is identifying metrics that can be used to gauge policy compliance.
	2 My organization is collecting metrics and has begun designing progress reporting based on them.
	3 My organization is tracking progress on policy adoption and continues to refine the metrics.
	Section 1 Comments (Provide any comments or additional information on this section here.)
	<b>2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.</b>
	0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)
	<b>2a. Developing an organization wide governance system.</b>
	1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
	2 My organization is finalizing plans that will result in an organization wide governance system.
	3 My organization has approved plans for an organization wide governance system.
	<b>2b. Designating one or more individuals responsible for implementation.</b>
	2 My organization has identified key individuals in the implementation process.
	3 My organization has assigned implementation duties and responsibilities to appropriate individuals.
	<b>2c. Implementing reporting/decision mechanism and maintain records.</b>
	1 My organization is developing tools and procedures for tracking ICT accessibility issues.
	2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
	3 My organization uses reports to make organizational changes to improve ICT accessibility.
	Section 2 Comments (Provide any comments or additional information on this section here.)

**3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.**

**Manufacturers:** Address processes that pertain to your development of ICT products.

**Service providers:** Address processes that pertain to your development of ICT services.

**Integrators:** Address processes that pertain to your ICT integration services and solutions.

**Reseller or Distributor:** Address processes that pertain to your product offerings.

0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)

**3a. Identifying candidate processes for criteria integration.**

- 1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
- 2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
- 3 My organization has approved plans to integrate accessibility criteria into these processes.

**3b. Implementing process changes.**

- 1 My organization has begun modifying its key business processes to integrate accessibility criteria.
- 2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
- 3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

**3c. Integrate fully into all key processes.**

- 2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings.
- 3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

Section 3 Comments (Provide any comments or additional information on this section here.)

**4. Provide processes for addressing inaccessible ICT.**

**Manufacturers:** Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d.

**Service providers:** Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d.

**Integrators:** Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d.

**Reseller or Distributor:** Address processes that pertain to your-product offerings in 4e.

0 We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of this section.)

**4a. Creating plans that include dates for compliance of inaccessible ICT.**

- 1 We are developing plans to identify and test ICT developed and sold by our organization.
- 2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance.
- 3 We perform accessibility testing on all products / serviced developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.

**4b. Providing alternate means of access until the ICT is accessible.**

- 0 We do not have plans for providing alternate means of access for our organization's ICT offerings.
- 1 We are developing plans for providing alternate means of access for our organization's ICT offerings.
- 2 We are implementing methods providing alternate means of access for our organization's ICT offerings.
- 3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.

**4c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects**

- 1 We are developing a corrective actions process for handling accessibility technical issues and defects
- 2 We are implementing a corrective actions process for handling accessibility technical issues and defects
- 3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.

**4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking.**

- 1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
- 1 We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
- 2 We have a record keeping system for tracking the accessibility status of current and future products / services.
- 2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
- 3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.
- 3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.

**4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Reseller or Distributor only)**

- 1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

0 We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)

5a. Defining skills/job descriptions.

- 1 We have defined general skills and knowledge needs for ICT accessibility.
- 2 We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
- 3 We have mapped key accessibility skills and knowledge needs to specific fields of practice.

5b. Identifying existing resources that match up and address gaps.

- 2 We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
- 3 We have organized the gaps in order of priority.

5c. Managing progress in acquiring skills and allocating qualified resources.

- 1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.
- 1 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
- 2 We have developed a process to track resource training and augmentation.
- 3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place.

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

0 We do not have a plan to make our accessibility policy or other accessibility information publically available. (If selected, skip to next section or provide comments at the end of this section.)

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
- 1 Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.
- 2 Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATs

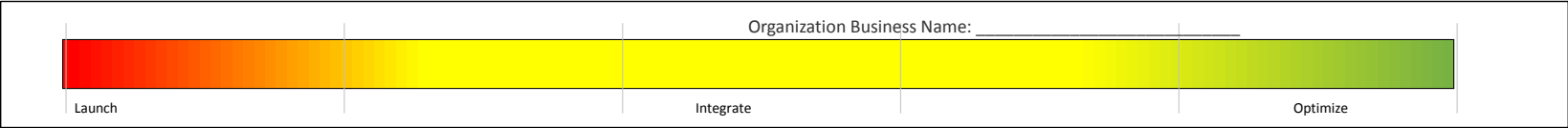
- 2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
- 3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible products / services.

6c. ICT Accessibility policy and documentation availability

- 2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
- 3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products / services.

Section 6 Comments (Provide any comments or additional information on this section here.)

Results	
Organization Business Name:	
Total Points	0
Percent Complete	0%





## Vendor ICT Accessibility Policy Assessment

This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations.

Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment is not a substitute for other requested accessibility information such as VPATs. All questions, inquiries, etc. should only be directed to Carrie Cooper: Phone: 512-936-2353 Fax: 512-936-6896 Email: [carrie.cooper@dir.texas.gov](mailto:carrie.cooper@dir.texas.gov)

### Organization information

Organization Business Name: Company X  
Organization Business Address: 1111 State Blvd. Anytown, TX 78701  
Point of Contact Information: Name John Doe Telephone: (555) 555-5555 Email: myemail@vendor.com  
Date of assessment completion: 1/1/15

### My organization is a (choose one or more if applicable)

- ☐ **Manufacturer:** My organization develops and sells its own ICT products / services
- ☐ **Service Provider:** My organization sells IT development services
- ☐ **Integrator:** My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
- ☐ **Reseller or Distributor--:** Does not develop or have its own products, but offers COTS 3rd party products

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant to your organization today.

### Responses

#### 1. Develop, implement, and maintain an ICT accessibility policy.

0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)

##### 2 1a. Having an ICT accessibility policy.

1 My organization is developing an ICT accessibility policy.

2 My organization is finalizing an ICT accessibility policy.

3 My organization has approved an ICT accessibility policy.

##### 1 1b. Having appropriate plans in place to implement and maintain the policy.

1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.

2 My organization has completed planning for initial implementation and maintenance of our accessibility policy.

3 My organization has approved plans for accessibility policy implementation and maintenance.

##### 1 1c. Establishing metrics and tracking progress towards achieving compliance to the policy.

1 My organization is identifying metrics that can be used to gauge policy compliance.

2 My organization is collecting metrics and has begun designing progress reporting based on them.

3 My organization is tracking progress on policy adoption and continues to refine the metrics.

Section 1 Comments (Provide any comments or additional information on this section here.)

#### 2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.

0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)

##### 1 2a. Developing an organization wide governance system.

1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.

2 My organization is finalizing plans that will result in an organization wide governance system.

3 My organization has approved plans for an organization wide governance system.

##### 2 2b. Designating one or more individuals responsible for implementation.

2 My organization has identified key individuals in the implementation process.

3 My organization has assigned implementation duties and responsibilities to appropriate individuals.

##### 1 2c. Implementing reporting/decision mechanism and maintain records.

1 My organization is developing tools and procedures for tracking ICT accessibility issues.

2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.

3 My organization uses reports to make organizational changes to improve ICT accessibility.

Section 2 Comments (Provide any comments or additional information on this section here.)

Example

### 3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

**Manufacturers:** Address processes that pertain to your development of ICT products.

**Service providers:** Address processes that pertain to your development of ICT services.

**Integrators:** Address processes that pertain to your ICT integration services and solutions.

**Vendor/Reseller:** Address processes that pertain to your product offerings.

0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)

#### 1 3a. Identifying candidate processes for criteria integration.

1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.

2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.

3 My organization has approved plans to integrate accessibility criteria into these processes.

#### 1 3b. Implementing process changes.

1 My organization has begun modifying its key business processes to integrate accessibility criteria.

2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.

3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

#### 3c. Integrate fully into all key processes.

2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings.

3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

Section 3 Comments (Provide any comments or additional information on this section here.)

### 4. Provide processes for addressing inaccessible ICT.

**Manufacturers:** Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d.

**Service providers:** Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d.

**Integrators:** Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d.

**Vendor/Reseller:** Address processes that pertain to your product offerings in 4e.

0 We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of this section.)

#### 2 4a. Creating plans that include dates for compliance of inaccessible ICT.

1 We are developing plans to identify and test ICT developed and sold by our organization.

2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance.

3 We perform accessibility testing on all products / serviced developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.

#### 2 4b. Providing alternate means of access until the ICT is accessible.

0 We do not have plans for providing alternate means of access for our organization's ICT offerings.

1 We are developing plans for providing alternate means of access for our organization's ICT offerings.

2 We are implementing methods providing alternate means of access for our organization's ICT offerings.

3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.

#### 2 4c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects

1 We are developing a corrective actions process for handling accessibility technical issues and defects

2 We are implementing a corrective actions process for handling accessibility technical issues and defects

3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.

#### 1 4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking.

1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.

1 We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.

2 We have a record keeping system for tracking the accessibility status of current and future products / services.

2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.

3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.

3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.

#### 4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Catalogue Vendor/Reseller only)

1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.

2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.

3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

0 We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)

5a. Defining skills/job descriptions.

- 1 We have defined general skills and knowledge needs for ICT accessibility.
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- 3 We have mapped key accessibility skills and knowledge needs to specific fields of practice.

5b. Identifying existing resources that match up and address gaps.

- 2 We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
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5c. Managing progress in acquiring skills and allocating qualified resources.

- 1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.
- 1 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
- 2 We have developed a process to track resource training and augmentation.
- 3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place.

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

0 We do not have a plan to make our accessibility policy or other accessibility information publically available. (If selected, skip to next section or provide comments at the end of this section.)

1

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
- 1 Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.
- 2 Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATs

- 2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
- 3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.

6c. ICT Accessibility policy and documentation availability

- 2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
- 3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Section 6 Comments (Provide any comments or additional information on this section here.)

Results

Organization Business Name:	
Total Points	18
Percent Complete	30%

