



Department of Information Resources

**Request for Offer
DIR-TSO-TMP-417**

**Hewlett-Packard Manufacturer Branded Hardware, Software,
Cloud and Related Services and Services**

Issued: 01/12/2018

Initial Responses Due: 02/26/2018 2:00 PM (CT)

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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 Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and 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 5 of this RFO contains more information regarding the response evaluation and Vendor selection process. DIR reserves the right to make a single award or multiple awards from this RFO. All contracts awarded shall be indefinite quantity contracts with no minimum guarantees of any purchases.

As a result of this RFO, DIR expects to create a contract vehicle that satisfies statewide procurement requirements for Hewlett-Packard Manufacturer branded computer hardware, software and cloud products and related services; hardware, software and cloud maintenance; computer device as a service (DaaS)/seat management; document/content management; computer hardware and software lease agreements; office machines; servers; multifunction devices; printers; projectors, cloud services and managed services contracts and improve the efficiency of the procurement process by shortening the time required to procure the same (this list is not all inclusive).

As part of DIR's initiatives to identify strategic sourcing opportunities, DIR reserves the right to make a single award or multiple awards as determined by DIR to achieve the highest overall best value to the state.

1.2. Background

1.2.1 Information Technology Acquisition

Through its Cooperative Contracts Program, DIR assists state agencies and local governments (Customers) with cost-effective acquisition of their information resources by negotiating, managing, and administering contracts with information technology providers. Customers include any Texas state agency, unit of local government, or institution of higher education as defined in Texas Government Code, Section 2054.003; the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code; those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Texas Government Code, Chapter 771; any local government as authorized through Texas Government Code, Chapter 791; the Interlocal Cooperation Act; the state agencies and political subdivisions of other states as authorized by Texas Government Code, Section 2054.0565; and for non-telecommunications IT Commodity products and services, "assistance organizations" defined in Texas Government Code, Section 2175.001.

DIR combines the buying power of authorized Customers to obtain volume-discounted pricing for selected technology products and services. In addition to offering volume-discounted pricing, DIR created the Cooperative Contracts (Co-op Contracts) Program to make it easier for Customers to acquire these products and services. Customers place orders with and issue payments directly to the Vendors participating in the Co-op Contracts Program. Subject to DIR rights set forth in Sections 4.8 and 4.9 of this RFO, DIR will award and negotiate base contract documents with Vendors as a result of this RFO. Customers contact the Vendor for product and/or services and pricing information, negotiate their own service level agreements and additional terms and conditions, if any, and send their purchase orders (with the DIR contract number) and payments directly to the participating awarded Vendor, not to DIR. Information regarding the Co-op Contracts Program is located on DIR's Web site at <http://dir.texas.gov/View-About-DIR/Pages/Content.aspx?id=41>.

1.2.2 **Texas Government Code, Section 2157.068**

Texas Government Code, Section 2157.068, effective September 1, 2005, requires State agencies to buy commodity items, as detailed below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

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 a commercially available program that operates 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 and may include Software provided as a service. 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, staff augmentation, training, maintenance, document/content management and subscription services. Seat management is a service 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.

Technology services do not include telecommunications services. Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001 is excluded. The following services were awarded under the TEX-AN Next Generation Procurement: Long Distance Services, Internet Services (including SOHO), Voice over Internet Protocol (VoIP), Local Voice Service, Wireless Service, Fixed Satellite and Access and Transport.

Institutions of higher education, K-12, and local governments are not required to purchase IT commodities from DIR, but may do so voluntarily. Information regarding Texas Government Code §2157.068, including processes and guidelines, is located on DIR's Web site at:

<http://dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=25>

1.2.3 Cost Avoidance Performance Measures

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

1.2.4 Cost Recovery

DIR recovers the costs of negotiating, executing, and administering the Co-op Contracts through an administrative fee. DIR is authorized to charge a reasonable administrative fee to all customers per Section 2157.068(d) of the Texas Government Code. The administrative fee must be included in the Vendor’s price to the customer and paid to DIR by the Vendor. The fee has been set at a not-to-exceed level of 2.00% by the current appropriations act of the State Legislature. For the purposes of responding to this RFO, the administrative fee of 0.75% shall be used in calculating the pricing specified in Bid Package 2. DIR may change the administrative fee at any time during a contract term. DIR will notify Vendors of any change in the administrative fee.

1.2.5 Historical Sales

Contracts negotiated and managed through the Cooperative Contracts Program resulted in over \$5 billion in Customer purchases for the past three (3) fiscal years combined. Information contained within the table below shows the total purchases for the past three (3) fiscal years by Customer segment. These purchases represent contracts that are hardware, software, and services related. The State’s fiscal year runs September 1st through August 31st.

	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017
Assistance Org	\$2,698,755.30	\$2,357,384.76	\$3,140,797.08
Higher Ed	\$402,325,577.21	\$351,306,997.17	\$338,555,841.28
K-12	\$677,730,203.21	\$628,703,140.22	\$577,858,667.24
Local Government	\$433,721,905.98	\$462,736,727.05	\$461,433,333.12
Out of State	\$10,944,441.03	\$8,767,492.85	\$20,451,872.88
State Agency	\$540,953,164.15	\$515,716,174.70	\$492,152,560.00
Total:	\$2,068,374,046.88	\$1,969,587,916.75	\$1,893,593,071.60

1.2.6 Current Contracts

DIR currently has contracts with two (2) Vendors to provide Hewlett Packard Branded Hardware, Software and Related Services. The volume of products sold through the contracts from Fiscal Year 2015 through Fiscal Year 2017 was approximately \$417,220,137.00.

1.2.7 Exclusions

The following manufacturers which would be within the scope of this RFO, are excluded due to direct contracts with those manufacturers:

- Apple
- Cisco
- Dell
- IBM
- Lenovo
- Novell
- Oracle
- Panasonic

In the event that DIR identifies other Publishers to be excluded, the Publisher names will be included in a future addendum. Vendors should submit a written request should they have questions about a specific publisher on a current DIR contract. This does not preclude the Vendor from proposing the utilization of these manufacturers as part of a total solution. However, if utilized as part of a total solution, the same product brand may not be offered outside of that package.

2. Vendor Information System (VIS) Portal - BidStamp

DIR's BidStamp Vendor Information System (BidStamp VIS) provides prospective bidders (Vendors) with the ability to create a profile that supports the key functions required during the solicitation response process. The high-level processes associated with the portal include vendor account/profile creation, vendor contact creation, vendor account management, and response submission. In addition to the account management and solicitation response capabilities enabled by the BidStamp VIS portal, Vendors will be able to view open solicitations and additional information about DIR.

2.1. Solicitation Response Requirement

Any Vendor responding to this RFO must submit their response through the BidStamp VIS. Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact DIR at the point of contact in section 4.1 of this solicitation. Please allow at least five business days for a response.

2.2. VIS Account Request Process

Before users can access any of the BidStamp VIS portal functionality, they will be required to provide login credentials to access a new or existing account. Vendors will access the BidStamp VIS Portal via <http://dircommunity.force.com/BidStamp>, and enter in their access credentials. If a Vendor does not yet have login credentials, it will request one by clicking on "Are you a vendor and need to request an account?" button that is located on the login page.

Instructions for VIS account access and using the BidStamp VIS portal to submit solicitation response can be found on DIR's website [Information for Vendors](#) page.

3. Scope

3.1. Products

The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services. DIR intends to contract to provide Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Products and Services, including but not limited to HP Inc.'s and Hewlett Packard Enterprise Company (HPE) brands such as:

- HP NonStop;
- Opencall;
- Vertica;
- 3PAR;
- LeftHand;
- Fortify;
- ArcSight;
- Tipping Point;
- ProCurve;
- JetAdvantage;
- SCITEX;
- Aruba;
- Troy; and
- Cloud Services.

Except as otherwise specified in this RFO, the scope of the RFO shall include all Hewlett Packard branded product categories, including but not limited to desktops, laptops, printers, servers, and the related accessories, software, and/or supplies applicable to each product category.

Customers have requested this scope to include Hewlett Packard Manufacturer hosted or cloud services as well as Hewlett Packard Manufacturer Branded mobile applications. Vendors are also encouraged to offer multiple OS, database and client platforms such as Windows, Linux, Oracle, SQL Server, iOS, Android or Open Source along with any complementing data analysis tools, if available.

Customers, at their discretion, may also purchase implementation, maintenance, training, application enhancement and other Related Services.

DIR intends to contract to provide Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services with the purpose of offering these products and services to aid DIR eligible customers in the acquisition and procurement of goods and services.

Products currently on DIR contract may be considered within scope of this solicitation only if those products are a component of a more comprehensive Hewlett Packard Manufacturer Branded solution. This RFO is not a solicitation for software products or replacement hardware currently on DIR contract.

3.1.1 Pricing

Any Vendor responding to this RFO must submit specific pricing for the products requested herein. For the purposes of obtaining pricing and evaluating the responses to this RFO, the products and related services, if any, shall be priced and discounted as instructed in this solicitation number DIR-TSO-TMP-417. All products for Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services may be made available through a Contract.

Pricing considerations should offer both full license and read only or limited access options, tiered volume discounts and escrow account options.

Because of statewide budget considerations, innovative pricing structures for maintenance and support are requested. Possible options could provide maintenance ceilings or enhancement/upgrade inclusion in core pricing. Customers have concerns regarding the predictability of ongoing maintenance costs; therefore, alternative options are encouraged and will be considered in the pricing evaluations.

Vendors must submit pricing on DIR's Automated Pricing Form in the BidStamp VIS. Failure to respond as instructed may result in Vendor's offer being disqualified from further evaluation.

- 1) Pricing Sheet: The products will be categorized as provided on the spreadsheet titled "Pricing Sheet." Vendors must offer only one discount for each Product Category listed. The discount for each product category will be applied to all products within the product category to determine the net DIR Customer price. The price to the DIR Customer shall include all shipping and handling fees.

3.1.1.1 Volume Pricing

- 1) Volume Pricing: DIR encourages Vendors to offer VOLUME pricing for specific Products and/or Services on the spreadsheet tabs of Bid Package 2, Pricing Index.
- 2) In addition to VOLUME pricing for specific Products and/or Services, DIR encourages Vendors to propose increased discount based on total statewide aggregate contract sales for Products and Services. See Instruction tab in Bid Package 2, Pricing Index for volume pricing instructions.

Vendors will enter Volume Discounts in Bid Package 2 spreadsheet, on the Volume Discount tab. Vendor will upload the Bid Package 2 spreadsheet for Volume Discounts into BidStamp VIS with Vendor's response.

- 3.1.1.2 In addition to purchases, DIR and any Vendor awarded a Contract as a result of this RFO may agree to provisions that allow leasing of the products offered under the resulting Contract.

DIR is not soliciting Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services for the agency. DIR establishes statewide master contracts for use by DIR eligible customers. DIR competitively bids for information technology products and

services.

Customers must identify their own needs, then contact an awarded DIR Vendor and obtain a price quote for products/services. Customers may submit a statement of work or purchase order to the Vendor when obtaining a quote based on their needs. The Customer makes the best value determination and issues a purchase order directly to the Vendor.

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

3.2. Related Services

Related services are any value-added service that Vendor may perform as related to the products proposed in Section 3.1. Related services include but are not limited to: product installation, maintenance and technical support, project management, managed services and product training. Any Vendor offering product-related services must submit a description of those services and the related pricing in the Automated Pricing Form in the BidStamp VIS.

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

3.3. Emerging Technologies

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 DIR-TSO-TMP-417. Vendor may propose such products and related services throughout the term of the contract. In order to meet the needs of DIR customers, DIR may request the addition of products and services within scope of DIR-TSO-TMP-417 by augmenting the original solicitation through a competitive bidding process. Pricing and terms will be negotiated upon DIR agreement. Any determination will be at DIR's sole discretion and any decision will be final.

3.4. Threshold and SOW Requirements

State Agency Customers (not including institutions of higher education), must adhere to the requirements of Senate Bill 533 (85R) relating to DIR Cooperative Contracts. Senate Bill 533 (SB533) requires state agencies to adhere to the following purchasing thresholds:

Threshold Requirements for IT Commodities (Hardware, Software and Services)

Contract Value	Number of DIR Vendors
\$50,000 or less	May award directly to DIR Vendor of choice
\$50,000.01 to \$1,000,000.00	Three (or all DIR Vendors in a category with less than three vendors)
\$1,000,000.01 to \$5 million	Six (or all DIR Vendors in a category with less than six vendors)
More than \$5,000,000.01	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts

In addition, TGC Section 2157.0685 requires that state agencies procuring more than \$50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

Threshold and SOW review and signature processes do not apply to Institutions of higher education, K-12, local governments, assistance organizations, or out-of-state customers.

3.5. Electronic and Information Resources (EIR) Accessibility

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

Accordingly, **all Vendors must submit completed VPAT form (Bid Package 8) or links to completed VPATs located on manufacturer websites for each proposed product or product family prior to an award for the proposed product or product family.** Instructions on how to complete a VPAT® can be found on [DIR's website](#).

Vendors claiming that a proposed product or family of products is exempt from accessibility requirements must use the VPAT form to: (1) specify each exempt product or product family and indicate "Not Applicable" in the "Supporting Features" column of the Summary Table; (2) provide an explanation in the "Remarks" column of Summary Table.

- For Consumer Off the Shelf (COTS) products, including Software as a Service (SAAS), a completed, accurate **Voluntary Product Accessibility Template (VPAT)** for each product or service included in the submitted pricelist.

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.

For non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) Vendors should complete a **Vendor Accessibility Development Services Questionnaire** (Bid Package 8) which documents Vendor's capability or ability to produce accessible electronic and information resources.

In addition to the VPAT requirement, vendors **must** complete the **Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment**. (Bid Package 9).

3.6. Form of Contract

3.6.1 Sample Contract and Terms Negotiation

Negotiation: 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-417, on the Electronic State Business Daily, <http://www.txsmartbuy.com/sp>

3.6.2 Proposed Changes and Exceptions

Caution: Vendors’ Responses may be disqualified if their exceptions are excessive, or if they except to non-negotiable terms, as described below. Item 11 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*. Vendor should provide any proposed changes to contract language in redline in the “Proposed Language (redline)” column of the chart in Item 11 of Exhibit A. **Vendors may request exceptions to standard contract terms and conditions; however, (1) where noted, exceptions to certain terms and conditions will not be allowed. If Vendor is unable to comply with these provisions, the Vendor’s response may be subject to disqualification from further consideration for this solicitation; (2) DIR in its discretion may or may not accept the Vendor’s requested exceptions; and (3) material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) may render the Offer non-responsive and may result in rejection of the bid.** 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 anticipates a contract with an initial term of two years renewable automatically in two-year increments for two (2) additional terms under the same terms and conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modifications of terms or not renew. In the event of prolonged contract negotiations DIR may in its discretion offer Vendor a shorter contract term.

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

4. General Information

4.1. Point of Contact

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

Carrie Cooper
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Phone: 512-936-2353
Fax: 512-936-6896
Email: carrie.cooper@dir.texas.gov

4.2. Contact with DIR Staff

Upon issuance of this RFO, employees and representatives of DIR other than the Point of Contact identified in Section 4.1 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.

4.3. Anticipated Schedule

4.3.1 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. Prospective Vendors will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

Date/Time	Activity
January 12, 2018	Publish RFO on Electronic State Business Daily
January 24, 2018 9:00 AM (CT)	Optional Vendor Conference
January 30, 2018 2:00 PM (CT)	Deadline for submitting questions
February 9, 2018 5:00 PM (CT)	Estimate for posting answers to questions on the ESBD
February 26, 2018 2:00 PM (CT)	Deadline for DIR to receive Vendor references
February 26, 2018 2:00 PM (CT)	Deadline for submitting responses to RFO
February 27, 2018 – until completed	Evaluation of responses, oral presentations (if requested), negotiation and contract execution

4.3.2 Vendor Conference

The Optional Vendor Conference will be held on the date and time specified in RFO Section 4.3.1 above at the location listed below. Please bring a copy of the RFO to the Vendor Conference, as DIR will only supply a limited amount of copies.

William P Clements State Office Building
300 West 15th Street
Room Number 103
Austin, Texas 78701

Webinar Information

A webinar will be held on the date and time specified in RFO Section 4.3.1 above.

To reserve a webinar seat, register at:

[https:// https://attendee.gotowebinar.com/register/5575820664584450819](https://attendee.gotowebinar.com/register/5575820664584450819)

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. All questions submitted at the conference must reference the appropriate RFO page and section number. Although DIR may provide tentative verbal 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://www.txsmartbuy.com/sp>. 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 ESD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESD will in no way release the selected Vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

4.3.3 **Written Questions and Official Answers**

Vendors shall submit all questions regarding this RFO through the BidStamp VIS. **Questions regarding this RFO will be accepted until the date and time specified above in Section 4.3.1, RFO Schedule.** Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-417 on the Electronic State Business Daily (ESBD), <http://www.txsmartbuy.com/sp>. 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 ESD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESD will in no way release the selected Vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

4.4. Historically Underutilized Businesses

The purpose of the Historically Underutilized Business (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 must 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. 26.0% 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 2161.252(b), and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

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.

4.4.1 **HUB Subcontracting Plan**

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. **The HUB Goal for this RFO is 21.1%. ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBS. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION.** The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are available in the BidStamp VIS. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that Vendors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Vendor for more than five years. If the Vendor does not plan to subcontract, Vendor must state that fact in their plan. An original, signed paper copy of the HSP must be uploaded into BidStamp. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.

4.4.2 **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 (HSP). Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation.

4.4.3 **HUB Resources Available**

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Website at: <https://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>. For additional information, contact the CPA's HUB program office at StatewideHUBProgram@cpa.texas.gov. 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.

4.5. Vendor Qualifications

4.5.1 Authorized Vendors

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

- 1) Manufacturer or publisher who will sell directly to Customers through a Co-op Contract.
- 2) Manufacturer or publisher of the offered product who will execute a Co-op 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 DIR Customers through a Co-op Contract. Respondents to this RFO must supply a signed (by hand or digital) letter from the Manufacturer/Publisher (Hewlett Packard) certifying that Respondent is an authorized reseller of Hewlett Packard Manufacturer's/Publisher's branded products and/or cloud services to DIR Customers and may sell such products under the terms and conditions of the DIR Contract, in support of Respondent's response. Signed letters of authorization must be submitted with Respondent's proposal. Unsigned letter(s) of authorization, typed signatures or the failure to submit the letter(s) with Respondent's response, may result in elimination of the related proposed products and services from the solicitation process.**

4.5.2 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 must agree that if at any time during the term of the contract the Vendor is listed on the Terrorism List, the Vendor 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 or its principals 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 for 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 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) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

4.5.3 **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:

https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php?_ga=1.223143899.1904350458.1471531332#

4.5.4 **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 12 of Exhibit 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 DIR within the past five (5) years;
- 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 DIR. Disclosure of former state employees may be limited to the last five (5) years; and
- 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.

4.6. Response Deadline and Submission Requirements

Vendors are invited to submit responses in accordance with the requirements outlined in this document. Responses must be received by DIR on or before **the solicitation response due date listed in section 4.3.1. No late responses will be reviewed.** No facsimile or e-mail responses shall be accepted. No physical written responses will be accepted unless pre-approved and authorized by DIR in accordance with section 2.1 of this solicitation.

4.6.1 **Official Timepiece**

The clock in the DIR Purchasing Office at 300 W. 15th Street, 13th Floor, Room 1335, is the official timepiece for determining compliance with the deadline. All responses will be date and time stamped electronically in the BidStamp VIS or if accommodation is granted by DIR, when received by the Purchasing Office on the 13th floor.

4.7. Response Format and Contents

Per section 2.1 of this solicitation, any Vendor responding to this RFO must submit their response through the BidStamp VIS unless granted an accommodation by DIR by the appropriate deadline.

4.7.1 **Mandatory Response Contents**

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

1) **Vendor Information – Exhibit A of this RFO**

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor. Vendors Response should offer information to support its capability to provide the products and services requested in this RFO. Attachments 1 and 2 to Bid Package 1, Exhibit A, must be completed and submitted with the response if applicable per Item 16.B.xxi (21), Canceled Contracts.

2) **Vendor History and Experience - Exhibit B of this RFO**

Vendors Response should offer information to support its capability to provide the products and services requested in this RFO.

3) **Contract Marketing and Support Plan – Exhibit C of this RFO**

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

4) **HUB Subcontracting Plan Forms – Exhibit D, Bid Package 1 of this RFO**

All Vendors, **INCLUDING THOSE WITH HUB DESIGNATION AND THOSE THAT DO NOT PLAN TO USE SUBCONTRACTORS**, must submit a HUB Subcontracting Plan. **The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal.** Refer to Section 4.4 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. The signed copy of the HSP must be uploaded and submitted in the BidStamp VIS.**

5) **Product Pricing**

Vendor shall provide categorized discounts as provided on the spreadsheet titled “Pricing Sheet” In Bid Package 2. (See Section 3.1.1 1)) above.

6) **Signed letter(s) from the Manufacturer/Publisher certifying that Respondent is an authorized reseller of Hewlett Packard Manufacturer’s/Publisher’s branded products and/or cloud services to DIR Customers and may sell such products under the terms and conditions of a DIR Contract, in support of Respondent’s response. A Partner Certification will not be sufficient.**

7) **Software License Agreements and/or Service Agreements**

Vendor shall provide any Software License Agreements and/or Service Agreements that are applicable to the services Vendor is proposing. These Agreements must, at a minimum, allow and provide for inclusion of the terms and conditions of the *Contract for Products and Related Services* (Bid Package 3) and the *Standard Terms and Conditions for Products and Related Services Contracts* (Bid Package 4).

8) **Policy-Driven Adoption for Accessibility – Bid Package 9**

Vendors must provide the PDAA form (Bid Package 9) as requested in Section 3.5, Electronic and Information Resources (EIR) Accessibility, of this RFO.

4.7.2 References

Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included on the questionnaire. Vendor may submit the Vendor Reference Questionnaire to companies or government agencies through the BidStamp VIS. DIR is not responsible for undeliverable e-mails or for non-responsive references. Vendor's references will be evaluated in accordance with Section 5.2.2. 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. References may be contacted for clarification at DIR's discretion.

4.7.3 Accessibility of Electronic Response Documents

Vendor response documents should be submitted in a format that is accessible to people with disabilities. This can include, but is not limited to accessible Office, Adobe PDF, or other productivity document suite. **Vendor should not submit scanned documents.**

4.8. 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.

4.9. 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, in whole or in part, 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-417 on the Electronic State Business Daily, <http://www.txsmartbuy.com/sp>. It is the responsibility of Vendors to monitor the web site for addenda. Vendor's failure to periodically check the ESBD will in no way release the vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO 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.

4.10. 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.

4.11. 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. Vendor may not mark its complete proposal “copyrighted” or mark every page as proprietary or confidential but 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 substantiating the exception(s).

The Office of the Attorney General (OAG) has the sole authority to determine whether information is confidential and not subject to disclosure under the Public Information Act DIR shall comply with all decisions 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.

5. Evaluation, Negotiations, and Award

5.1. Evaluation of Responses

DIR will review proposals to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. All proposals determined to be responsive will go through a financial review overseen by the Chief Financial Officer’s (CFO’s) office. **The financial review is a pass/fail determination that is final.** Only proposals that receive a passing grade will proceed to the Evaluation Committee. DIR will establish an Evaluation Committee to review all responses that have not been rejected. At any time during the evaluation process, DIR may ask any or all Vendors to elaborate on or clarify specific points or portions of their response. DIR’s request and Vendor’s response shall be in writing. 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.

5.2. Evaluation Criteria

5.2.1 Pass/Fail Criteria

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

1. DUNS Number and report is a Pass/Fail review conducted by the Finance Group (Exhibit A, Item 13)
2. Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
 - a. A score of less than 90% in the Vendor Performance System;
 - b. Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports,

- c. Having purchase orders that have been cancelled in the previous 12 months for non-performance (including but not limited to late delivery, etc.).
- 3. Completion of HUB Subcontract Plan (Bid Package 1, Exhibit D).

5.2.2 Weighted Evaluation Criteria

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

45 %	Pricing (Bid Package 2)
30 %	Vendor’s history and experience in providing the products and services requested and Vendor references (Bid Package 1, Exhibit B)
20 %	Contract Marketing and Support Plan (Bid Package 1, Exhibit C)
5 %	Computer Equipment Recycling Program Preference (Item 15, Bid Package 1, Exhibit A)
100%	Total Weight

Vendors will be evaluated on performance under existing and prior contracts for similar products or services and the evaluation may include consideration of Vendor performance as recorded in the CPA Vendor Performance Tracking System as described in the Texas Administrative Code, 34 TAC 20.108(b).

5.3. Oral Presentations, Best and Final Offer

DIR in its discretion shall make the determination whether to request oral presentations and/or engage in the Best and Final Offer process. Both oral presentations and the he 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 Texas Government Code, Section 2157.003, is obtained for the State.

5.4. Negotiations

At the conclusion of the evaluation, as described within Sections 5.1 through 5.3 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 DIR Executive Management.

5.5. Award of Contract

DIR 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-417 on the Electronic State Business Daily, <http://www.txsmartbuy.com/sp>, 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 all contracts resulting from this RFO have been executed.

Any Contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

5.6. 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

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**Exhibit A
Vendor Information**

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) Officer or Agent empowered to contractually bind the Vendor:

Name:

Title:

Address:

Phone Number:

Fax:

Email:

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8) Indicate whether or not your company is a certified Historically Underutilized Business (HUB) with the State of Texas by the CPA.

_____Yes _____No

9) Provide the year in which your company was created/incorporated.

10) Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included in Bid Package 7. 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).

11) List below by subsection all exceptions to the *Contract for Products and Standard Terms and Conditions for Products and Related Services* **in redline form**. You must include the basis of your 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. Vendor shall not redline the contract or Exhibit A. All exceptions must be listed in the chart below.**

Section	Section Title	Explanation of Exception	Proposed Language (redline)

12) Vendor and Subcontractor Conflict of Interest Disclosure

List below all current or former employees of Vendor and/or proposed Vendor personnel with conflict of interests as follows:

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.

Vendor Personnel:

<u>Current or Former Employees who are current or former State employees (see Note 1 above)</u>	<u>Vendor Personnel related to State of Texas Employees (see Note 2 above)</u>

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Subcontractor personnel:

<u>Current or Former Employees of Subcontractor(s) who are current or former State employees (see Note 1 above)</u>	<u>Subcontractor Personnel related to State of Texas Employees (see Note 2 above)</u>

3) Vendor certifies 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.

13) 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.**

14) Electronic Product Environment Assessment Tool (EPEAT). To the extent Customers use products provided by Vendor in the delivery of Services offered under this RFO, indicate whether the products provided are EPEAT certified and identify the applicable EPEAT rating (bronze, silver or gold) for certified products. If products provided are not EPEAT certified, describe Vendor's efforts to obtain EPEAT certified products.

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 Respondent's own program

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

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16) 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 4.7.1 of the RFO and reject any response that does not comply.

All responses must be received by DIR on or before the date and time specified in Section 4.7.1 of this RFO. No late responses will be reviewed.

Item	Check
Responses must be submitted in the BidStamp VIS Portal	
Mandatory Response Contents	
Vendor Information – Exhibit A	
Vendor History and Experience – Exhibit B	
Contract Support Plan – Exhibit C	
Manufacturer Letters, Section 4.5.1, RFO Requirement	
HUB Subcontracting Plan Forms – BidStamp VIS Form (Print, sign and upload)	
Pricing Form (BidStamp VIS Portal)	
Accessibility Documentation (PDAA), Section 3.5 RFO Requirement	
Service Agreement(s) for any Services proposed	

B. Certification Statement

The undersigned hereby certifies on behalf of insert company name here that DIR-TSO-TMP-417 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) To the extent applicable to this scope of this Solicitation, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services offered in the response to this solicitation number DIR-TSO-TMP-417;
- iv) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- v) 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;
- vi) 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;

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- vii) 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;
- (viii) 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;
- (ix) 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;
- (x) 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);
- (xi) 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;
- (xii) 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; .Enter the name and Social Security Numbers for each person below (alternatively, if this section applies, Vendor may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- xiii) 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;
- (xiv) 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;
- (xv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;
- (xvi) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does 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, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xvii) 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;
- (xviii) 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;

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(xix) 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

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

(xxi) Respondent certifies that there have been **yes** / **no** canceled contracts in the past five (5) years. Note: If yes is checked, Respondent must complete Exhibit A, Attachment 1 & 2 and submit with the response; and

(xxii) Vendor represent and warrant as required by Texas Government Code section 2270.002, by executing this Contract, that Vendor does not, and will not during the term of this Contract, boycott Israel. Vendor further certifies that no subcontractor of the Vendor boycotts Israel, or will boycott Israel during the term of this Contract. Vendor agrees to take all necessary steps to ensure this certification remains true during the term of this Contract.

Signature of Officer or Agent empowered to contractually bind the Vendor

Date

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**Exhibit A
Attachment 1
List of Vendor's Cancelled Contracts**

**THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR ANY IDENTIFIED
CONTRACT CANCELLED WITHIN THE PAST FIVE YEARS REFERENCE AND SUBMITTED
WITH THE RESPONDENT'S REQUIREMENTS SUBMISSION**

RESPONDENT NAME: _____

COMPANY NAME			
COMPANY ADDRESS (Street, City, State, Zip Code)			
*CONTACT NAME / PHONE			
*E-MAIL			
CONTRACT DATE:	AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:
DESCRIPTION OF SERVICE:			
REASON FOR CANCELLATION:			

COMPANY NAME			
COMPANY ADDRESS (Street, City, State, Zip Code)			
*CONTACT NAME / PHONE			
*E-MAIL			
CONTRACT DATE:	AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:
DESCRIPTION OF SERVICE:			
REASON FOR CANCELLATION:			

*** Note: Do NOT complete these fields if DIR is the Cancelled Contract Reference**

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**Exhibit A
Attachment 2
RESPONDENT RELEASE OF LIABILITY
(TO REFERENCE)**

**THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED
REFERENCE (GENERAL REFERENCES AND CANCELLED CONTRACT REFERENCES) AND
SUBMITTED WITH THE RESPONDENTS REQUIREMENTS SUBMISSION**

To company providing the reference:

Enter name of company providing the reference here

You are hereby requested to provide a business reference for:

*Enter name of company (Respondent) or key staff person's name needing a
reference*

to the:

Texas Department of Information Resources
Solicitation Evaluation Team

Please disclose any and all information that you deem relevant relating to the above-named parties' business relationship. By signing this document, the entity and, if applicable, individual key staff person signing below releases the above-named company providing a reference, its agents, employees, and all persons, natural or corporate, in privity with above-named company providing a reference from any and all liability, claims or causes of action arising from their disclosure of information pursuant to this request for a business reference.

Signed the _____ day of _____, 20____.

(Respondent Signature)

(Respondent Printed Name)

(Respondent Title)

Signed the _____ day of _____, 20____.

(Key Staff Signature or "N/A" if Respondent-
level release)

(Key Staff Printed Name)

**Department of Information Resources
Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and
Related Services and Services
Request for Offer DIR-TSO-TMP-417**

**Exhibit B
Vendor History and Experience**

- 1) Provide a detailed history of your company.
- 2) Provide the number of years your company has sold the Hewlett Packard Manufacturer Branded products/services requested in this RFO.
- 3) Provide the number of years your company has sold the Hewlett Packard Manufacturer Branded products/services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.
- 4) Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the Hewlett Packard Manufacturer Branded 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.

- 5) 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.

- 6) Indicate whether or not your company holds a contract with any entity or consortium authorized by Texas law to sell the products and services requested in this RFO 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.

- 7) Indicate whether or not your company currently holds or has held a DIR contract(s) in the past 5 years.
_____Yes _____No

If yes, provide the DIR contract number(s).

END OF EXHIBIT B

**Department of Information Resources
Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and
Related Services and Services
Request for Offer DIR-TSO-TMP-417**

**Exhibit C
Contract Marketing and 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 services listed in this RFO to eligible DIR Customers. A Contract Marketing Plan, as an example, would list the marketing elements Vendor would use like publishing on DIR website, email signature tag, Trade Publication Advertisements etc.
- 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 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) Do you have other existing DIR Contracts? If yes, list those existing DIR contracts, and explain how this contract will impact the marketing and support of your other contracts? How will your other contracts impact the marketing of this contract, should you receive an award?
- 5) Provide an overview of the management and customer relationship team that will be responsible for managing the State's relationship in the event of being awarded a contract. Address the following:
 - a. Describe the geographical reach of the Vendor, teaming partners and subcontractors (if any), to include, at a minimum, locations of corporate and branch offices as well as locations where work is currently taking place. Explain how these locations and any proposed new locations will be used in the performance of this contract.
 - b. Provide names, titles, prior account management experience for accounts of the State's size and type.
 - c. Provide an organization chart identifying the chain of command for managing this contract, including resource sourcing responsibility, and organization components that support this contract. In a narrative, describe how the Vendor will manage the contract to ensure uninterrupted, high quality performance and overall contract effectiveness.

END OF EXHIBIT C

Instructions

VENDORS RESPONDING TO THIS RFO MUST ENTER THEIR PROPOSED PRICING SHEET IN THE BIDSTAMP VENDOR INFORMATION SYSTEM (VIS). CATEGORIES MUST BE ENTERED IN BIDSTAMP EXACTLY AS LISTED IN THE PRICING SHEET.

- 1) The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).
- 2) Hewlett Packard Product Discounts MUST be listed by product categories listed on Hewlett Packard Branded Discount Sheet. The Vendor will enter the required information into DIR's Automated Pricing Form in the BidStamp VIS.
- 3) Discount range (e.g., 0% - 99%) is not allowed.
- 4) Vendor shall provide a link to Manufacturer Suggested Retail Published Pricing List.
- 5) Volume Pricing information is not entered in the BidStamp VIS. If Vendor is proposing Volume Discounts, the product must be listed separately with the associated type or grouped with an associated discount.
For example:
ABC Product, 1-5 Units - 10.00% - two decimals
ABC Product, 6-10 Units - 20.00% - two decimals
ABC Product, 10+ Units - 30.00% - two decimals
- 6) **All Product Category Discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS. The Hewlett Packard Branded discount sheet is provided as a guide only.**
- 7) **All Third Party Product Descriptions and Discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS. The discount sheet for 3rd-Party Products is provided as a guide only.**
- 8) **All Volume Discounts will be listed on the Volume Discount Tab and will be submitted in the EXCEL spreadsheet format.**

Department of Information Resources
 Request for Offer DIR-TSO-TMP-417
 Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services Discount Sheet
 BID PACKAGE 2 - PRICING SHEET

**SAMPLE ONLY. All Product Category Discounts must be entered into DIR's Automated Pricing Form
 DO NOT SUBMIT PRICING ON THIS EXCEL SPREADSHEET.**

Hewlett Packard Manufacturer BRANDED PRODUCTS				
BRAND	PRODUCT CATEGORY	Product Description	MSRP	DIR Customer Discount % off MSRP
EXAMPLES for use. Respondent must enter the Product Category (green highlight) in BidStamp VIS, exactly as written below. Failure to do so may result in Respondent's bid not tabulating correctly.				
Hewlett Packard	Desktops			
Hewlett Packard	Workstations			
Hewlett Packard	Servers			
Hewlett Packard	Storage			
Hewlett Packard	Networking			
Hewlett Packard	Thin Clients (inc. Options & Accessories)			
Hewlett Packard	Monitors			
	(ex: Monitors, Digital Sinage Options & Accessories)			

Hewlett Packard	Notebook and Tablet Products (inc. Options & Accessories)			
Hewlett Packard	Printers & Scanners			
Hewlett Packard	HP Supplies			
	(ex. LaserJet Supplies, Designjet and InkJet Supplies)			
Hewlett Packard	Software			
	(ex. Term and Perpetual, Enterprise, Commercial, Education, Security)			
Hewlett Packard	Other - Miscellaneous (does not fit in other Categories)			

RELATED SERVICES

BRAND	SERVICE DESCRIPTIONS	Product Description	MSRP	DK Customer Discount % off MSRP
Hewlett Packard	<i>EXAMPLE: Training</i>	6 hours new software training, includes printed Users Guide	\$ 100.00	20.00%
Hewlett Packard	Maintenance and Support Services			
	(ex: Care Pack, Implementation, VAX Server Maintenance, Printer Maintenance, Onsite Labor)			
Hewlett Packard	Other Related Services			

SERVICES

BRAND	SERVICE DESCRIPTIONS	Product Description	MSRP	DK Customer Discount % off MSRP
Hewlett Packard	<i>EXAMPLE: Cloud Hosting</i>	Cloud Hosting Monthly	\$ 100.00	20.00%

Hewlett Packard	Maintenance and Support Services			
Hewlett Packard	Services			
	(ex. Technical Services, Managed Services, Device as a Service (DaaS), Customization and Configuration, Vulnerability Assessment, System Capability and Stress Testing)			

Department of Information Resources
 Request for Offer DIR-TSO-TMP-417
 Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Servi
 BID PACKAGE 2 - PRICING SHEET

COMPANY NAME: _____

VENDOR SHALL ENTER VOLUME DISCOUNTS IN THIS BID PACKAGE 2 AND UPLOAD THE SPREADSHEET INTO THE BIDSTAMP VIS WITH VENDOR'S VOLUME TYPE AS NEEDED FOR PRODUCT CATEGORIES LISTED.

VOLUME DISCOUNTS- HP BRANDED PRODUCTS AND SERVICES

Type of Volume	Product Category
By QTY	
1-99 units	
100-500 units	
500+ units	
Per Transaction (e.g. Purchase Order)	
Per Dollar Volume Threshold	
Total Statewide Aggregate Contract Sales	

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 15th 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-TSO-TMP-417, on *POSTING DATE*, for Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services. *DIR subsequently issued a BAFO opportunity on BAFO DATE*. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-417 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, Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-417, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-417, 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, Service Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-417, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-417, 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 two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, the contract will renew automatically in two (2) year increments for two additional terms under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. **Product and Service Offerings**

A. **Products**

Products available under this Contract are limited to Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and third-party products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. **Services**

Related services include but are not limited to: deployment, help desk, product installation, maintenance and support, product training and other Related Services as specified in Appendix C, Pricing Index.

Services available under this Contract include but are not limited to: managed services, storage and server assessment services, asset recovery services, Device as a Service (DaaS)/seat management, cloud services and other Services as specified in Appendix C, Pricing Index.

Vendor may offer future Related Services and Services upon DIR approval. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

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

5. DIR Administrative Fee

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

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

6. Notification

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

If sent to the State:

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

If sent to the Vendor:

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 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 the Software License Agreement; provided however, that the Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. 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 D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Master Operating Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Operating Lease Agreement in Appendix E of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

E. Master Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix F of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions. Texas State Agencies that have the requisite capital authority and who are not required to utilize such authority via the Texas Public Finance Authority may or may not be eligible to utilize the Master Lease

Agreement; each such agency must confer with its own counsel to make this determination.

F. Conflicting or Additional Terms

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

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

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

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

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

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

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

No exceptions have been agreed to by DIR and Vendor.

Bid Package 4
Request for Offer DIR-TSO-TMP-417
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

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Bid Package 4
Request for Offer DIR-TSO-TMP-417
Appendix A Standard Terms and Conditions For Product and Related Services Contracts

13. Captions 28

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

1. Contract Scope

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

2. No Quantity Guarantees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

3. Definitions

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

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

B. **Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract

management staff or their designees.

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

4. General Provisions

A. Entire Agreement

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

B. Modification of Contract Terms and/or Amendments

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

C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
- 2) If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other

parties or circumstances shall remain valid and in full force and effect.

D. Assignment

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

E. Survival

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

F. Choice of Law

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

G. Limitation of Authority

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

H. Proof of Financial Stability

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

5. Intellectual Property Matters

A. Definitions

1) "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations,

manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

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

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

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

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

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon

creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

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

D. Waiver of Moral Rights.

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

E. Confidentiality.

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

F. Injunctive Relief.

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

G. Return of Materials Pertaining to Work Product.

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

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

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

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and

prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

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

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

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

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

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

necessary hardware, software and technology services.

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

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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

B. Use of Order Fulfillers

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

1) Designation of Order Fulfillers

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

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

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

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

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

2) Changes in Order Fulfiller List

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

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall

only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

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

D. Customer Site Preparation

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

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

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

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

2) Accurate and Timely Contract Information

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

3) Webpage Compliance Checks

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

4) Webpage Changes

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

5) Use of Access Data Prohibited

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

6) Responsibility for Content

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

F. DIR Logo

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

G. Vendor and Order Fulfiller Logo

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

H. Trade Show Participation

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

I. Orientation Meeting

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

J. Performance Review Meetings

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

K. DIR Cost Avoidance

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

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Customer Price

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

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

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

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

3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for

the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

G. Changes to Prices

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

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

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller.

Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

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

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

9. Contract Administration

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

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

1) State Contract Manager

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

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute

resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

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

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

2) Detailed Monthly Report

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

3) Historically Underutilized Businesses Subcontract Reports

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

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

4) DIR Administrative Fee

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

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days

written notice to Vendor without the need for a formal contract amendment.

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

5) Accurate and Timely Submission of Reports

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

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

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

C. Records and Audit

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

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

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

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books,

documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

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

D. Contract Administration Notification

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

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

10. Vendor Responsibilities

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

A. Indemnification

1) INDEPENDENT CONTRACTOR

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

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or

performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

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

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

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

4) PROPERTY DAMAGE

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

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

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

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

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to

receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;

- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of

appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and

- (xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and
- (xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.

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

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

D. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

E. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

F. Use of Subcontractors

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of

its obligations under the Contract.

G. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

H. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

J. Background and/or Criminal History Investigation

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

K. Limitation of Liability

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

L. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

M. Prohibited Conduct

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

O. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

P. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and

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

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

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

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

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

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.
- 3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

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

b) Termination for Non-Appropriation by DIR

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

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

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

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas

Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

7) Vendor or Order Fulfiller Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Force Majeure

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

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

Appendix E

MASTER OPERATING LEASE AGREEMENT

1. **Definitions.** Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.
- (a) “Assets” refers to the Products as allowed within the Contract, including the Hardware, Software, and Related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).
 - (b) “Contract” refers to DIR Contract number DIR-TSO-XXXX into which this Appendix is incorporated.
 - (c) “Event of Default” is defined in Section 23, “Default.”
 - (d) “Event of Loss” means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.
 - (e) “Hardware” refers to the computer machinery and equipment specifically identified on the applicable Schedule.
 - (f) “Lease” means the financing transaction described in this MOLA.
 - (g) “Lessee” means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), 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 the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.
 - (h) “Lessor” means the Vendor identified in the Contract.
 - (i) “MOLA” means this Master Operating Lease Agreement (Appendix E). Any reference to “MOLA” includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.
 - (j) “Rent Payment” means the amount payable by Lessee for the Assets as specified in the applicable Schedule.
 - (k) “Schedule” or “Supplementary Schedule” to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee,

applicable Rent Payment, and term of the Lease. To be effective, a Schedule must be executed by both Lessor and Lessee.

- (l) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on the applicable Schedule.
- (m) "Software" refers to the computer programs specifically identified on the applicable Schedule.
- (n) "Stipulated Loss Value" is the value of each unit of Hardware at various times during the Lease as specified in the applicable Schedule; however, in no event will the Stipulated Loss Value of a Hardware unit exceed its fair market value.

2. Lease.

- (a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code – Leases, Tex. Bus. & Comm. Code Article 2A. Under no circumstances shall this MOLA or any Schedules entered into under it be construed as a "finance lease" as defined in Tex. Bus. & Comm. Code § 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Tex. Bus. & Comm. Code § 2A.511.
- (b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on each Schedule. Each such Schedule constitutes a separate agreement between Lessor and Lessee. In addition, each Schedule is subject to the terms and conditions of this MOLA as if a separate MOLA were executed for such Schedule by the parties.
- (c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Schedule applicable to such Assets. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.
- (d) Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or provided any legal or management advice to Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in a Rider to the MOLA or the Schedule. To the extent that any of the provisions of the MOLA conflict with any of the terms contained in any Schedule, the terms of this MOLA shall control.
- (e) If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Assets for its own use, DIR is not a party to any Schedule executed under this MOLA and is not responsible for Rent Payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or Lessor (or both of them) arising from the use of this MOLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both

of those parties arising from the use of this MOLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 (“Default”) of this MOLA.

3. Term of MOLA.

The term of this MOLA shall commence (a) upon commencement of the term of the Contract, if this MOLA was agreed to under the Contract, or (b) on the Effective Date specified in Amendment Number (XX), if this MOLA is added to the Contract under such Amendment. The term of this MOLA shall continue until the last to occur of the following: (i) the Schedule Term of each Schedule entered into by the parties has expired or been terminated, or (ii) the Contract has expired or been terminated. In the event of any termination or expiration of the Contract or termination of this MOLA, any provisions of the Contract and this MOLA as may be necessary to preserve the rights of Lessor or Lessee hereunder shall survive said termination or expiration.

4. Term of Schedule.

The term for each Schedule agreed to by a Lessee and Lessor under this MOLA shall commence on the date specified in the Lessee Certificate of Acceptance, as described in Section 10, unless earlier terminated as provided for herein, the Schedule shall continue for the number of whole months or other payment periods set forth in it (the “Schedule Term”). Specifically with respect to Hardware, under no circumstances shall the Schedule Term exceed seventy five percent (75%) of the economic life of the Hardware, nor shall the present value of the Rent Payments for the Hardware on the Schedule Commencement equal or exceed ninety percent (90%) of the value of the Hardware. Lessee shall provide confirmation that its lease of assets satisfies the two foregoing percentage limitations. The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 (“Appropriation of Funds”) of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor’s election to cancel the Schedule pursuant to Section 24 (“Remedies”) of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 (“Remedies”) of this MOLA, or (v) as otherwise set forth herein.

5. Administration of MOLA.

- (a) When a prospective Lessee wishes to lease Assets under this MOLA, the prospect will submit its request directly to Lessor. Lessor shall apply the applicable pricing discounts as stated in Section 4 of the Contract or the price as agreed upon by Lessee and Lessor in the applicable Schedule, whichever is lower and submit the lease proposal to the prospective Lessee. If the prospective Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease directly with the prospective Lessee.
- (b) With respect to Lessor’s obligations under Section 5 of the Contract to report the sale and make payment of the DIR administrative fee as defined in that Section, all leasing activities in conjunction to this MOLA shall be treated as a “purchase sale.” Notwithstanding treatment of this Lease as a "purchase sale" as to the transaction between Lessor and DIR under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 (“Lease”) hereof for the transaction(s) between Lessor and Lessee.

- (c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated on the applicable Schedule to Lessor for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions on the Schedule issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Schedule Term, and the Rent Payments), Lessor's order acknowledgement form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.
- (d) Until a Schedule is entered into by Lessor and a Lessee per the process set forth in this MOLA, neither DIR nor any Lessee is obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to a Lessee.

6. Rent Payments.

- (a) During the Schedule Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the Rent Payments set forth in the relevant Schedule for each Asset. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.
- (b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be refunded to Lessee within ninety (90) calendar days. All Rent Payments shall be paid to Lessor at the address stated on the Schedule or any other such place as Lessor or its assigns may hereafter direct to Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to Lessor. Lessor's (including its assignees') remedy for late payments is as set forth in Chapter 2251, Texas Government Code.

Lessee acknowledges and agrees, except as specifically provided for in Section 8 ("Appropriation of Funds") of this MOLA and excluding claims resulting from a breach of Lessor's obligations as set forth in this MOLA or any Schedule or of Lessee's rights under Section 16 ("Quiet Enjoyment") hereof, that Lessee's obligation to pay Rent and other sums payable hereunder, shall not be abated, reduced or subject to offset or diminished as a result of any past, present or future claims Lessee may have against Lessor under this Lease. Notwithstanding the foregoing, nothing in this Section or any other provision of this MOLA shall affect or preclude Lessee from enforcing any and all other rights it may have against Lessor and its assignees under this MOLA or otherwise affect any right Lessee may have against the manufacturer or licensor of the Assets or any party other than Lessor.

7. Liens.

Lessee shall keep the Assets free and clear of all levies, liens and encumbrances, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of the Assets.

8. Appropriation of Funds.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any fiscal period (as set forth on the Schedule) of Lessee beyond the fiscal period first in effect at the commencement of the Schedule Term, Lessee may terminate the Schedule with regard to those of the Assets on the Schedule so affected. Lessee shall endeavor to provide Lessor with written notice sixty (60) days prior to the end of its current Fiscal Period confirming which Assets on the Schedule will be so affected by the termination. All obligations of Lessee to make Rent Payments due with respect to those Assets after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in those Assets will terminate, Lessee shall surrender those Assets in accordance with Section 15 (“Option to Extend; Surrender of Assets”) of this MOLA, and the applicable Schedule shall be deemed amended. Lessee represents and warrants it has adequate funds to meet its obligations during the first fiscal period of the Schedule Term. Lessor and Lessee intend that the obligation of Lessee to make Rent Payments under this MOLA shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas, as applicable, beyond the fiscal period for which sufficient funds have been appropriated to make Rent Payments hereunder.

9. Assignment of Warranties.

Each Schedule is intended to be a true lease and operating lease as defined in Tex. Bus. & Comm. Code Article 2A. Lessor has acquired or will acquire the Assets in connection with this MOLA and hereby agrees to assign to Lessee any warranties provided to Lessor with respect to the Assets during the Term of the applicable Schedule, to the extent the warranties are assignable. Unless Lessor is the manufacturer or is otherwise liable under the Contract, Lessor shall not be liable for damages for any reason for any act or omission of the manufacturer of the Assets. Except as provided in Section 24 (“Remedies”) hereof, Lessee acknowledges that none of the following shall relieve Lessee from the obligations under this MOLA during the Schedule Term unless due to Lessor’s acts or omissions: (i) Lessee’s dissatisfaction with any unit of the Assets, (ii) the failure of an Asset to remain in useful condition for the Schedule Term, or (iii) the loss or right of possession of the Assets (or any part thereof) by Lessee. Lessee shall have no right, title or interest in or to the Assets except the right to use the same upon the terms and conditions herein contained. The Assets shall remain the sole and exclusive personal property of Lessor and not be deemed a fixture whether or not it becomes attached to any real property of Lessee.

10. Inspection and Acceptance.

Promptly upon delivery of the Assets, Lessee will inspect and test the Assets. No later than twenty (20) business days following its date of delivery (or, if the Assets are part of a system, the date of last delivery of the Assets comprising the system), Lessee will execute and deliver either (i) a Certificate of Acceptance, or (ii) written notification of any defects in the Assets. If Lessee has not given notice within such time period, the Assets shall be deemed accepted by Lessee as of the twentieth (20th) business day, as described above. In the event Lessee does not accept the Assets, Vendor will promptly remove the Assets from Lessee's premises and deliver conforming Assets within ten (10) business days thereafter. If conforming Assets are not delivered within that timeframe, Lessee may terminate the Schedule on written notice to Lessor. Lessee's acceptance of any Assets shall not be deemed to waive any rights Lessee may have against the manufacturer or licensor, as applicable. Lessor and its assigns, including either of their respective agents shall have the right to inspect the Assets upon reasonable notice to Lessee and during normal business hours provided that anyone who does so has first executed a non-disclosure agreement acceptable to Lessee.

11. Installation and Delivery; Use of Assets; Repair and Maintenance.

- (a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.
- (c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

12. Relocation of Hardware and Software.

Except as set forth on the applicable Schedule, Lessee shall at all times keep the Hardware and Software within its exclusive possession and control. Lessee may move the Hardware or Software to another location of Lessee within the continental United States, provided Lessee is not in default on any Schedule and pays all costs associated with such relocation. If such relocation requires Lessor's prior written consent, Lessee

shall obtain such consent prior to relocating the Hardware or Software, as applicable, which consent Lessor shall not unreasonably withhold. Notwithstanding the foregoing, in those situations where consent is otherwise required, Lessee may move the Hardware or Software to another location within Texas without notification to, or the consent of, Lessor; provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Hardware and Software at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Hardware and Software, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Hardware and Software.

13. Taxes.

Unless otherwise agreed by the parties on the applicable Schedule, Lessor will pay any Imposition or file any forms or returns with respect thereto. Lessee shall, when billed, and with copy of Imposition invoice(s) with respect to Assets specified on the Schedule, reimburse Lessor for such payment. For purposes of this paragraph "Impositions" means all taxes, including personal property taxes and fees, without pro-ration as described in the Financial Disclosure Summary Work Sheet (Attachment 1) hereafter imposed, assessed or payable during the term of the relevant Schedule including any extension thereof. Because the reimbursement date for an Imposition may occur after the expiration or termination of the term of the relevant Schedule, it is understood and agreed that Lessee's liability to reimburse for such Impositions shall survive the expiration or termination of the term of the relevant Schedule.

14. Ownership.

The Hardware and Software shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties' rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Hardware except a leasehold interest as provided for herein. Lessee agrees that the Hardware shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of Lessor. Upon Lessor's request, Lessee will enter into agreements necessary to ensure that the Hardware remains the personal property of Lessor.

15. Option to Extend; Surrender of Hardware and Software Assets.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term, Lessor shall notify Lessee in writing of options to extend the Schedule for continued use of the Hardware or Software specified in that Schedule. If Lessee desires to exercise any of the options offered by Lessor (and provided that, with respect to Hardware, any extension does not exceed seventy five percent (75%) of its economic life), Lessee shall give Lessor irrevocable written notice of the option Lessee intends to exercise at least forty-five (45) days before the expiration of such Schedule Term. In the event the Lease is extended for some but not all of the Hardware and Software specified on a Schedule, the Schedule shall be updated to reflect those changes. At the end of the Schedule Term (as well as with respect to any Hardware and Software not extended as described immediately above), Lessee will surrender and return the Hardware and Software to Lessor in compliance with Section 15(b) below.
- (b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Schedule, Lessee, at its cost and expense, shall promptly return the Hardware, freight

prepaid, to Lessor in good repair and working order, with reasonably unblemished physical appearance and with no defects which affect the operation or performance of the Hardware (“Return Condition”), reasonable wear and tear excepted. If the Hardware is not in Return Condition, Lessee shall, at its option, either restore the Hardware (at Lessee’s cost) to Return Condition or pay for the Hardware at its Stipulated Loss Value if the Hardware is not reasonably repairable. Lessee shall arrange and pay for the de-installation and packing of the Hardware in suitable packaging, and return the Hardware to Lessor at the location specified by Lessor; provided, however, that such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. At its option and expense, Lessor shall have the right to supervise and direct the preparation of the Hardware for return. If, upon termination or expiration of the Schedule for any reason, Lessee fails or refuses to return to Lessor a Hardware unit or Software program specified in that Schedule or to pay Lessor the Stipulated Loss Value for a Hardware unit, Lessee shall remain liable for Rent Payments for that unit or program up to the date on which the unit or program is returned to the address specified by Lessor (or on which Lessee has paid Lessor the Stipulated Loss Value). In such event and specifically with respect to the Hardware, Lessor shall also have the right to enter Lessee’s premises or any other premises where the Hardware may be found upon reasonable written notice to the Lessee and during normal business hours, and subject to Lessee’s reasonable safety and security requirements to take possession of and to remove the Hardware, at Lessee’s sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Hardware. However, as an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession except as provided by Paragraph b. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the Constitution and laws of the State of Texas, Lessee’s obligation to return Hardware may, at Lessor’s option, be specifically enforced by Lessor.

16. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee’s quiet enjoyment and use of the Assets as long as an Event of Default (as hereinafter defined in Section 23 (“Default”) of the MOLA) has not occurred.

17. Warranties regarding the Assets.

Lessor acknowledges that warranties made by the manufacturer or licensor of the Assets, if any, inure to the benefit of Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer or licensor of the Assets and shall not pursue any such claim against Lessor.

18. No Warranties by Lessor regarding the Assets.

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the

extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessee specifically waives all right to make claim against Lessor for breach of any warranty of any kind whatsoever; and with respect to Lessor, Lessee leases the Hardware and Software “as is”. Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature caused directly or indirectly by any Hardware or Software leased hereunder, or by the use or maintenance thereof, or by the repairs, service or adjustment thereto or any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused. Lessor agrees to assign to Lessee, upon Lessee’s request therefor, any warranty of a manufacturer or licensor or seller relating to the Hardware and Software that may have been given to Lessor.

19. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to the Hardware specified on the Schedule, whether partial or complete, from any cause whatsoever. Lessee shall promptly notify Lessor regarding any Event of Loss. Upon any Event of Loss, Lessee shall, at its option: (a) immediately repair the affected Hardware so that it is in good condition and working order, (b) replace the affected Hardware with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value for such affected Hardware unit, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Hardware for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of a Hardware unit for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of Lessee with respect to such Hardware unit (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a), Texas Government Code) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, this MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any Schedule between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MOLA or any Schedule between Lessor and Lessee;
- (f) The use of the Assets is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MOLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided Lessee or Lessor with any legal or management advice regarding the MOLA or any Schedule executed pursuant thereto;
- (b) This MOLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MOLA;

- (d) The entering into and performance of the MOLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Hardware or Software pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MOLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract; and
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law.

22. Representations and Warranties of Lessor.

Lessor represents and warrants for the benefit of DIR and each Lessee:

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MOLA and each Schedule executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or any Schedule;
- (d) The entering into and performance of the MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and Schedules thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MOLA or any Schedule;
- (f) Lessor acknowledges that DIR and any Lessee that is a state agency, as government agencies, are subject to the Texas Public Information Act, and that DIR and Lessees that are state agencies will comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an “Event of Default”): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (b) Lessee’s material breach of this MOLA, any Schedule, or any applicable software license agreement, which is not cured within thirty (30) days after written notice thereof from Lessor; (c) Lessee’s filing of any proceedings commencing bankruptcy or the taking of other similar action by Lessee under any state insolvency or similar law, (d) the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (e) subjection of a substantial part of Lessee’s property or any part of the Hardware to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (f) any representation or warranty made by Lessee in this MOLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Assets being or becoming untrue in any material respect.

24. Remedies.

(a) Lessor’s Remedies.

- i. Upon the occurrence of an “Event of Default,” Lessor may, in its sole discretion, do any one or more of the following:
 - A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate any or all Schedules executed by Lessor and the defaulting Lessee;
 - B. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule;
 - C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Schedule is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 (“Option to Extend; Surrender of Hardware and Software Assets”) hereof;
 - D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of:
 - I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the

Stipulated Loss Value of the Hardware at the end of the Schedule Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;

- II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and
- III. interest on (I) from the date of default at 1½ % per month or portion thereof (or the highest rate allowable by law, if less) and, on (II) from the date Lessor incurs such fees, costs or expenses.

ii. Upon return or repossession of the Hardware, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Hardware, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Hardware, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Hardware shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Hardware shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Hardware, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.

iii. No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default by Lessee shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.

iv. Neither DIR nor non-defaulting Lessees shall be deemed in default under the MOLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

(b) Lessee's Remedies. Anything herein to the contrary notwithstanding, Lessee shall have all rights provided under Tex. Bus. & Comm. Code § 2A.508 through § 2A.522, including without limitation, the right to cancel a Schedule and recover damages from Lessor in the event of nonperformance of or other default by Lessor hereunder.

- (c) Each party agrees that any delay or failure by the other party to enforce that party's rights under this MOLA or a Schedule does not prevent that party from enforcing its rights at a later time.

25. Notices and Waivers.

- (a) All notices relating to this MOLA shall be delivered to DIR or Lessor as specified in Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MOLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.
- (b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and each Schedule, Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MOLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MOLA, any Schedule and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under any Schedule; and DIR and each Lessee leasing Hardware under the MOLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MOLA. Each Lessee leasing Assets through Schedules under this MOLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Lessor shall remain liable for performance under the MOLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) Lessee will not sell, assign, sublet, pledge or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except otherwise permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance (if Acceptance has taken place); (b) Opinion of Counsel; (c) Financial Statements; (d) incumbency certificate; and (e) other documents specified in the applicable Schedule as being reasonably required by Lessor.

28. Miscellaneous.

- (a) Prior to delivery of any Assets, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control. In such event, the obligation of Lessee to commence Rents for such Assets shall also be suspended.
- (b) Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Assets, other than as set forth in this MOLA, including the Contract, and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MOLA, including the Contract, and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee, order acknowledgement and other forms issued by Lessor, and the like. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MOLA and the Contract and that both contain the entire agreement between them. The terms and conditions of this MOLA may be amended only by written instrument executed by Lessor and DIR. The terms of a Schedule may only be amended in a writing signed by both Lessee and Lessor.

**Attachment 1 to the Master Operating Lease Agreement
Financial Disclosure Summary**

Lease Rate Factor(s):	Response	Notes
Equipment Type A		
Equipment Type B		
Equipment Type C		
How is Daily Rental calculated?		
Is Daily Rental invoiced separately or rolled into monthly rental?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Is this a Step Lease?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does this lease include software?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, who owns the software?	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor	
Personal Property Tax	Response	Notes
Estimated PPT		
PPT Payment made by	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor on Agency behalf	
PPT calculation method	<input type="checkbox"/> Agency pays direct <input type="checkbox"/> Lessor pays and passes invoice through <input type="checkbox"/> Lessor estimates and includes <input type="checkbox"/> Lessor sets PPT at disclosed rate	
If PPT rate changes, how are charge backs or short falls handled?	<input type="checkbox"/> N/A - Agency pays direct <input type="checkbox"/> N/A - Lessor pays/passes invoice through <input type="checkbox"/> Lessor is responsible <input type="checkbox"/> Lessee is invoiced for short fall	
Equipment Schedule Details	Response	Notes
Can Agency make decisions at asset level (extend, purchase, return)?	<input type="checkbox"/> Asset level <input type="checkbox"/> All and not less than all	
Does this ES auto extend?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If Yes, how long?		
What is the cost of the Auto extension?		
What is the notice period?		

Are negotiated extensions FMV based?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
On FMV, can Agency select own evaluator?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is asset and lease information available online?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
End of Lease Details	Response	Notes
Where are the assets returned to?		
What is the return freight cost?		
Who pays the return freight cost?	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor	
Do I need to return original packaging?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost if not returned?	
Do I need to return original manuals and documentation?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost if not returned?	
Do I need to return software?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost if not returned?	
Is there an FMV purchase cost cap?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost cap percentage?	
What is the cost for a lost asset?		
What is the cost for missing equipment?		
What is the cost for data sanitization on assets with memory?		
What is the cost for data sanitization?		
What is the cost for on-site data destruction?		

Appendix F

MASTER LEASE AGREEMENT

1. Scope.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Supplementary Schedule (“Schedule”), which is a separate agreement executed from time to time by Lessor and Lessee and makes specific reference to this Master Lease Agreement (“MLA”). The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA and made subject to such terms and conditions as if a separate MLA were executed for each Schedule by the Lessee. Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within a Rider to the MLA or the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term “Equipment” shall refer to the Products and any related Services as allowed within said Contract number DIR-TSO-XXX, as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Equipment for its own use, DIR is not a party to any Schedule executed under this MLA and is not responsible for Rents, payments or any other obligations under such Lessee’s Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or the Lessor or both of them arising from the use of this MLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 of this MLA.

Any reference to “MLA” shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by DIR and Lessor.

As to conditions precedent to Lessor’s obligation to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as the Schedule, the Acceptance Certificate, Opinion of Counsel, and any other documentation as may be required by the Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee’s financial condition except as provided for within Section 7 of this MLA.

2. Term of MLA.

The term of this MLA shall commence on the last date of approval by DIR and Lessor of Amendment Number XXX (XX) and shall continue until (i) the obligations of Lessee under every Schedule are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises their termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

The term for each Schedule, executed in conjunction to this MLA, shall commence on the date of execution of an Acceptance Certificate by the Lessee or twenty (20) days after the delivery of the last piece of Equipment to the Lessee ("Commencement Date"), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 of this MLA.

4. Administration of MLA.

- (a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.
- (b) All leasing activities in conjunction to this MLA shall be treated as a "purchase sale" in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the Contract.
- (c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR- TSO-XXX on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.
- (d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

5. Rent Payments.

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MLA and any Schedule. All Rent Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to the Lessor. Any sum received by the Lessor later than ten (10) business days after its due date will bear interest from such due date at the rate of one-percent (1%) per month (or the maximum rate allowable by law, if less) until paid. Late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assignees, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal

property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

- (a) This paragraph applies only to Lessees designated as state agencies defined in Section 2054.003, Texas Government Code, including institutions of higher education as defined in Texas Education Code, Section 61.003 and those state agencies utilizing a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be so terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

- (b) This paragraph applies only to Lessees designated as local government entities.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds

are not appropriated for Lessee to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of the Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, the Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period first in effect at the commencement of the Schedule Term will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term.

8. Selection of Equipment.

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor agrees, to the extent they are assignable, to assign the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term. Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

9. Inspection and Acceptance.

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate, or (ii) written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of the tenth (10th) business day. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

10. Installation and Delivery; Use of Equipment; Repair and Maintenance.

- (a) All transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by the Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.
- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment.

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within Texas without notification to, or the consent of, Lessor. Provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

12. Ownership.

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

13. Purchase and Renewal Options; Location and Surrender of Equipment.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together with all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN, THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.**
- (b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location,

unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs required to restore the Equipment to Return Condition. Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians, approved by Lessor and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. IF, UPON TERMINATION OR EXPIRATION OF THE SCHEDULE FOR ANY REASON, LESSEE FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR. Notwithstanding the foregoing, Lessor shall have the right, without notice or demand, to enter Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Equipment. As an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Texas, Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

14. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 23 of the MLA) has not occurred.

15. Warranties.

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer of the Equipment and shall not pursue any such claim against Lessor. Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

16. No Warranties.

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED

DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEROF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

17. Indemnification.

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee shall indemnify, protect, save and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.
- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR individually and collectively assume all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR agree to indemnify, save and hold harmless Lessor from any and all such claims and all expenses incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.
- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment. Lessee further agrees that it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment.

18. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected Equipment, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

19. Insurance.

At its expense, Lessee shall keep the Equipment insured against all risks of loss and damage with companies acceptable to Lessor for an amount equal to the original cost of the Equipment, with Lessor or its assign(s) named as a loss payee. Lessee shall also maintain comprehensive general liability insurance, with Lessor or its assign(s) named as an additional insured. Lessee shall be liable for any loss not covered by insurance. All said insurance shall be in form and amount satisfactory to Lessor. Lessee shall pay the premiums therefor and deliver to Lessor or its assign(s) the certificates of insurance or duplicates thereof or other evidence satisfactory to Lessor or its assign(s) of such insurance coverage. Evidence of such insurance coverage shall be furnished no later than the Schedule Commencement Date of each Schedule and from time to time as Lessor or its assign(s) may request. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any said insurance policy. Lessee may self-insure with respect to the required coverage.

Further, Lessees that are defined as state agencies in accordance with Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, may self-insure their obligations in this section.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MLA or any Schedule between Lessor and Lessee;
- (f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided the Lessee or the Lessor with any legal or management advice regarding the MLA or any Schedule executed pursuant thereto;
- (b) This MLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding Agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MLA;
- (d) The entering into and performance of the MLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Equipment pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract;
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law; and
- (h) DIR is a government agency subject to the Texas Public Information Act. Lessor acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney Generals' office concerning this Act.

22. Representations and Warranties of Lessor.

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MLA and each Schedule executed in conjunction to this MLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;

- (d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound; and
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA or any Schedule.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (c) failure by Lessee to perform or observe any other term, covenant or condition of this MLA, any Schedule, or any applicable software license agreement, which is not cured within ten (10) days after notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any representation or warranty made by Lessee in this MLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being or becoming untrue in any material respect.

24. Remedies.

- (a) Upon the occurrence of an "Event of Default" and at any time thereafter Lessor may, in its sole discretion, do any one or more of the following: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate any or all Schedules executed by Lessor and the defaulting Lessee; (ii) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages, including all of Lessor's economic loss for the breach thereof; (iii) whether or not the Schedule is terminated, upon notice to Lessee, take possession of the Equipment wherever located, without demand, liability, court order or other process of law, and for such purposes Lessee, to the extent authorized by Texas law, hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Equipment is located or cause Lessee, and Lessee hereby agrees, to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Equipment is not returned to or repossessed by Lessor, the present value of the estimated in-place fair market value of the Equipment at the end of the Schedule Term as determined by Lessor, each discounted at a rate equal to the rate used by Lessor for business

opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

- (b) Upon return or repossession of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Equipment shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at the Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
- (c) No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- (d) Neither DIR nor non-defaulting Lessees shall be deemed in default under the MLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

25. Notices and Waivers.

All notices relating to this MLA shall be delivered to DIR or the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original

signature document for all purposes. This MLA and those Schedules in conjunction hereof are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Default shall not be a waiver of any other or subsequent Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor. No failure on the part of Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and DIR and each Lessee leasing Equipment under the MLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MLA. Each Lessee leasing Equipment through Schedules under this MLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Each Lessee leasing Equipment through Schedules under this MLA and DIR acknowledge that the assigns do not assume Lessor's obligations hereunder and agree to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which DIR or the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.

- (b) **LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE'S CONSENT. LESSEES THAT ARE STATE AGENCIES, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AGREE THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR'S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER.** Without the prior written consent of Lessor,

DIR shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance; (b) Opinion of Counsel; (c) proof of self-insurance acceptable to Lessor; (d) Financial Statements; (e) Incumbency Certificate; and (f) Other documents as reasonably required by Lessor.

28. Lessee's Waivers.

To the extent permitted by applicable law, Lessee hereby waives the following rights and remedies conferred upon Lessee by the Uniform Commercial Code: to (i) cancel any Schedule under the MLA; (ii) repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time.

29. Security Interest and UCC Filings.

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code ("UCC"). Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

30. Miscellaneous.

- (a) **Applicable Law and Venue.** The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. In the event of a dispute between the parties, exclusive venue for any legal action shall be in the state court where

Lessee has its principal office or where the Equipment is located, with the following exception: if a Lessee is designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, then exclusive venue shall be in the state district court of Travis County, Texas.

- (b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an “Original” for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a “Copy”. NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY “COPY” OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE “ORIGINAL” COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.
- (c) Suspension of Obligations of Lessor. Prior to delivery of any Equipment, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control.
- (d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and Contract Number DIR-TSO-XXX and that both contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.
- (f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.
- (g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.
- (h) Lessor Certifications. Lessor certifies that:
 - (i) it has not given, offered to give, and does 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 this MLA and/or any Schedules executed hereunder;

- (ii) it 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, Texas Family Code and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither it , nor anyone acting for it, has 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;
- (iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- (v) during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it 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,
- (vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;
- (vii) 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 MLA;
- (viii) Lessor 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;
- (ix) as of the effective date of the MLA, 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;
- (x) to the extent applicable to this scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xi) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (xii) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All

Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;

- (xiii) Lessor agrees that any payments due under this MLA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiv) Lessor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; if Section 669.003 applies, Vendor will complete the following information: Name of Former Executive; Name of State Agency; Position with Vendor and Date of Employment with Vendor.
- (xv) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (xvi) Lessor represents and warrants that the Lessee's payment to Lessor and Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
- (xvii) Under Section 2155.006, Government Code, Lessor certifies that the individual or business entity in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate. In addition, Lessor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the MLA; and (xviii) Lessor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

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

- (i) **Dispute Resolution.** The following paragraph applies only to Lessees designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and rules promulgated

there under shall be used by the Lessee and Lessor to attempt to resolve any claim for breach of agreement made by Lessor.

(j) Sovereign Immunity. Nothing herein shall be construed to waive the State's sovereign immunity.

(k) 31. Amendments.

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and DIR.

EXAMPLE



Bid Package 7

Department of Information Resources

**Hewlett-Packard Manufacturer Branded Hardware,
Software, Cloud and Related Services and Services**

Request for Offer DIR-TSO-TMP-417

Vendor References

VENDOR REFERENCES

**Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services
Request for Offer DIR-TSO-TMP-417**

REFERENCE DEADLINE TO DIR: No later than 02/26/2018 2:00 PM

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: HPBranded417.RFO@DIR.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name _____
Insert Type of (e.g. Software) Product/Services Category _____
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
HPBranded417.RFO@DIR.texas.gov.**

Rating: (0) Unsatisfactory; (1) Marginally 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 Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services
Products and Related Services**

- 1. Have you purchased any Hewlett Packard Branded or Related Services from this Vendor in the past 2 years?
Yes___ No___
- 2. Vendor's ability to provide the products or services in a timely manner? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
- 3. Vendor's knowledge of and ability to answer questions regarding the products? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
- 4. Vendor's ability to resolve problems? 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Cost

- 5. Timely, current, accurate & complete invoices 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Timeliness of Performance

- 6. Adherence to delivery schedule (major tasks, milestones) 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Business Relations & Customer Satisfaction

- 7. Effectively communicated with customer management & staff 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
- 8. Vendor personnel (professional, cooperative & flexible) 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
- 9. Vendor's attitude toward customer service 0. ___ 1. ___ 2. ___ 3. ___ N/A ___
- 10. Overall Satisfaction with Vendor 0. ___ 1. ___ 2. ___ 3. ___ N/A ___

Comments: (Please use additional page if necessary)

In your opinion, should this Vendor be used again for Hewlett Packard Branded or Related Services?
Yes___ No ___

In your opinion, should this Vendor be recommended to others? Yes___ No ___

Rater's Name: _____ Date: _____
Organization: _____
Title: _____
Phone Number: _____ Fax Number: _____ Email address: _____

Vendor Reference Evaluation Scoring

Excellent (3)

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.
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Satisfactory (2)

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.
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Marginal (1)

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.
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Unsatisfactory (0)

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.
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**Request for Offer
Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and
Related Services and Services
DIR-TSO-TMP-417**

Bid Package 8

VPAT™

Voluntary Product Accessibility Template®

Version 1.3

The purpose of the **Voluntary Product Accessibility Template**, or **VPAT™**, is to assist Federal contracting officials and other buyers in making preliminary assessments regarding the availability of commercial “Electronic and Information Technology” products and services with features that support accessibility. It is assumed and recommended that offerers will provide additional contact information to facilitate more detailed inquiries.

The first table of the Template provides a summary view of the Section 508 Standards. The subsequent tables provide more detailed views of each subsection. There are three columns in each table. Column one of the Summary Table describes the subsections of subparts B and C of the Standards. The second column describes the supporting features of the product or refers you to the corresponding detailed table, e.g., “equivalent facilitation.” The third column contains any additional remarks and explanations regarding the product. In the subsequent tables, the first column contains the lettered paragraphs of the subsections. The second column describes the supporting features of the product with regard to that paragraph. The third column contains any additional remarks and explanations regarding the product.

Date:

Name of Product:

Contact for more Information (name/phone/email):

Summary Table

VPAT™

Voluntary Product Accessibility Template®

<i>Criteria</i>	Supporting Features	Remarks and explanations
Section 1194.21 Software Applications and Operating Systems		
Section 1194.22 Web-based Internet Information and Applications		
Section 1194.23 Telecommunications Products		
Section 1194.24 Video and Multi-media Products		
Section 1194.25 Self-Contained, Closed Products		
Section 1194.26 Desktop and Portable Computers		
Section 1194.31 Functional Performance Criteria		
Section 1194.41 Information, Documentation and Support		

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Section 1194.21 Software Applications and Operating Systems – Detail

VPAT™

Voluntary Product Accessibility Template®

<i>Criteria</i>	Supporting Features	Remarks and explanations
(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.		
(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.		
(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that Assistive Technology can track focus and focus changes.		

<p>(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to Assistive Technology. When an image represents a program element, the information conveyed by the image must also be available in text.</p>		
<p>(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.</p>		
<p>(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.</p>		
<p>(g) Applications shall not override user selected contrast and color selections and other individual display attributes.</p>		
<p>(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.</p>		
<p>(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.</p>		
<p>(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.</p>		

(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.		
(l) When electronic forms are used, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.		

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**Section 1194.22 Web-based Internet
information and applications – Detail**

VPAT™

Voluntary Product Accessibility Template®

<i>Criteria</i>	Supporting Features	Remarks and explanations
(a) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).		
(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.		
(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup.		

<p>(d) Documents shall be organized so they are readable without requiring an associated style sheet.</p>		
<p>(e) Redundant text links shall be provided for each active region of a server-side image map.</p>		
<p>(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.</p>		
<p>(g) Row and column headers shall be identified for data tables.</p>		
<p>(h) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.</p>		
<p>(i) Frames shall be titled with text that facilitates frame identification and navigation</p>		
<p>(j) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.</p>		
<p>(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply with the provisions of this part, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.</p>		
<p>(l) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by Assistive Technology.</p>		

(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with §1194.21(a) through (l).		
(n) When electronic forms are designed to be completed on-line, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.		
(o) A method shall be provided that permits users to skip repetitive navigation links.		
(p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		

Note to 1194.22: The Board interprets paragraphs (a) through (k) of this section as consistent with the following priority 1 Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5 1999) published by the Web Accessibility Initiative of the World Wide Web Consortium: Paragraph (a) - 1.1, (b) - 1.4, (c) - 2.1, (d) - 6.1, (e) - 1.2, (f) - 9.1, (g) - 5.1, (h) - 5.2, (i) - 12.1, (j) - 7.1, (k) - 11.4.

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Section 1194.23 Telecommunications
Products – Detail
VPAT™
Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.		
(b) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.		
(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.		
(d) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.		
(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.		
(f) For transmitted voice signals, telecommunications products shall		

<p>provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.</p>		
<p>(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.</p>		
<p>(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.</p>		
<p>(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.</p>		
<p>(j) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.</p>		
<p>(k)(1) Products which have mechanically operated controls or keys shall comply with the</p>		

<p>following: Controls and Keys shall be tactilely discernible without activating the controls or keys.</p>		
<p>(k)(2) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be operable with one hand and shall not require tight grasping, pinching, twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2N) maximum.</p>		
<p>(k)(3) Products which have mechanically operated controls or keys shall comply with the following: If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.</p>		
<p>(k)(4) Products which have mechanically operated controls or keys shall comply with the following: The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.</p>		

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Section 1194.24 Video and Multi-media
Products – Detail
VPAT™
Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
<p>a) All analog television displays 13 inches and larger, and computer equipment that includes analog television receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. As soon as practicable, but not later than July 1, 2002, widescreen digital television (DTV) displays measuring at least 7.8 inches vertically, DTV sets with conventional displays measuring at least 13 inches vertically, and stand-alone DTV tuners, whether or not they are marketed with display screens, and computer equipment that includes DTV receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals.</p>		
<p>(b) Television tuners, including tuner cards for use in computers, shall</p>		

<p>be equipped with secondary audio program playback circuitry.</p>		
<p>(c) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.</p>		
<p>(d) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.</p>		
<p>(e) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.</p>		

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Section 1194.25 Self-Contained, Closed Products – Detail

VPAT™

Voluntary Product Accessibility Template[®]

<i>Criteria</i>	Supporting Features	Remarks and explanations
(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach Assistive Technology to the product. Personal headsets for private listening are not Assistive Technology.		
(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		
(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(d) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(e) When products provide auditory output, the audio signal shall be		

<p>provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.</p>		
<p>(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.</p>		
<p>(g) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.</p>		
<p>(h) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.</p>		

<p>(i) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.</p>		
<p>(j) (1) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length on products which are freestanding, non-portable, and intended to be used in one location and which have operable controls.</p>		
<p>(j)(2) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.</p>		

<p>(j)(3) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.</p>		
<p>(j)(4) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Operable controls shall not be more than 24 inches behind the reference plane.</p>		

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<p>Section 1194.26 Desktop and Portable Computers – Detail</p> <p>VPAT™</p> <p>Voluntary Product Accessibility Template®</p>		
<p>Criteria</p>	<p>Supporting Features</p>	<p>Remarks and explanations</p>

<p>(a) All mechanically operated controls and keys shall comply with §1194.23 (k) (1) through (4).</p>		
<p>(b) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).</p>		
<p>(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.</p>		
<p>(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards</p>		

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Section 1194.31 Functional Performance
Criteria – Detail
VPAT™
Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for Assistive Technology used by people who are blind or visually impaired shall be provided.		
(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for Assistive Technology used by people who are visually impaired shall be provided.		
(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for Assistive Technology used by people who are deaf or hard of hearing shall be provided		
(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an		

enhanced auditory fashion, or support for assistive hearing devices shall be provided.		
(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for Assistive Technology used by people with disabilities shall be provided.		
(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.		

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Section 1194.41 Information, Documentation and Support – Detail

VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) Product support documentation provided to end-users shall be		

made available in alternate formats upon request, at no additional charge		
(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.		
(c) Support services for products shall accommodate the communication needs of end-users with disabilities.		

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Department of Information Resources

**Request for Offer
DIR-TSO-TMP-417**

**Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and
Related Services and Services**

Bid Package 9

**Vendor ICT Accessibility Policy Assessment
(PDAA)**



BID PACKAGE 9

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. regarding Bid Package 10, Vendor ICT Accessibility Policy

(PDAA) should be directed to Jeff Kline: Phone: 512-463-3248 Email: Jeff.Kline@dir.texas.gov

Organization information

Organization name: _____
Organization address: _____
Responder contact information: _____
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 Catalog Supplier: 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
1
2
3

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)

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.

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.

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
1
2
3

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)

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.

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.

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.

Frequently Asked Question (FAQ) for Vendors regarding Policy-Driven Adoption for Accessibility (PDAA)

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: 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. 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, 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

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 [\(<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx>\)](http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.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. Additionally, Vendor organizations 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

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

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 [\(<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx>\)](http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

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

[\(<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement>\)](http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement)

Or contact the Statewide EIR Accessibility Coordinator via Email at:

statewideaccessibilitycoordinator@dir.texas.gov

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: 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
- 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

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

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

<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.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

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.

offerings or Vendors by the procuring organization.

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 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,

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 are 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

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

<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement>

Or contact the Statewide EIR Accessibility Coordinator at:

statewideaccessibilitycoordinator@dir.texas.gov

EXAMPLE



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. regarding

Bid Package 10, Vendor ICT Accessibility Policy (PDAA) should be directed to Jeff Kline: Phone: 512-463-3248 Email: Jeff.Kline@dir.texas.gov

Organization information

Organization name: Company X
Organization address: 1111 State Blvd. Anytown, TX 78701
Responder contact information: myemailaddress@yahoo.com
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 Catalogue Supplier: 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.)

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.

Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue 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.

Catalogue Vendor/Reseller: Address processes that pertain to your reseller or catalogue 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(es) 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.

Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services

Request for Offer DIR-TSO-TMP-417

Vendor Pre-Bid Conference

January 24, 2018

9:00 am (central time)



Introduction

Linda Hart, DIR

Contract Manager

Chief Procurement Office

Stephanie Harrison, DIR

Contract Manager

Chief Procurement Office

Lynn Sanchez, DIR

HUB Coordinator

Chief Procurement Office

Jeff Kline, DIR

Program Director

Statewide EIR Accessibility

Tequila Jackson, DIR

Contract Specialist

Chief Procurement Office

Agenda

- General Information
- BidStamp Vendor Information System Portal (VIS) Overview
- Request for Offer (RFO)
 - RFO Overview
 - RFO Scope
 - RFO Schedule
 - RFO Contents
 - Mandatory Submissions
 - Evaluation Criteria
- Break
- Questions
- Conference Closing

General Information

- Reference the RFO page number and Section number when submitting questions.
- **Webinar participants may submit questions electronically at anytime during the webinar, please use the question tab.**
- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Check the ESBD often for updates
- All questions regarding this RFO must be **submitted in writing through the BidStamp Vendor Information System Portal (VIS)** by 2:00 P.M. (CT), January 30, 2018.

General Information (continued)

- **Disqualification of Offers**
 - Failure to sign Vendor Information Form (Exhibit A)
 - Failure to complete Financial Information (DUNS Number)
 - Failure to complete a Historically Underutilized Business (HUB) Subcontracting Plan (HSP)
 - Failure to submit on or before due date and time
 - Contact with DIR employees regarding this RFO other than designated contacts
- **Delivery of Offers**
 - **Any Vendor responding to this RFO must submit their response through the BidStamp VIS.**

General Information (continued)

Vendors and all vendor representatives shall not attempt to discuss the contents of this RFO with any employees or representatives of DIR other than designated contacts. Failure to observe this restriction may result in disqualification of any related Response.

General Information (continued)

Contacts for inquiries regarding this RFO

Carrie Cooper – carrie.cooper@dir.texas.gov

Contacts for the following related topics:

Vendor Information Systems (VIS) Portal - BidStamp: Kelly Parker -- kelly.parker@dir.texas.gov

HUB Subcontracting Plan: Lynn Sanchez – dir.hub@dir.texas.gov

Statewide Electronic and Information Resources (EIR) Accessibility: Jeff Kline – jeff.kline@dir.texas.gov

DIR Cooperative Contracts

- DIR combines the buying power of DIR Customers to obtain volume-discounted pricing for IT products and services.
- Customer purchases through the Cooperative Contracts Program resulted approximately \$6 billion for fiscal years FY2015 – FY2017. See Bid Package 1, Section 1.2.5, Historical Sales.
- Sales for the Hewlett Packard Manufacturer Branded Hardware, Software and Related Services contracts from September 2015 through August 2017 was \$417,220,137.00.

Bid Submittal

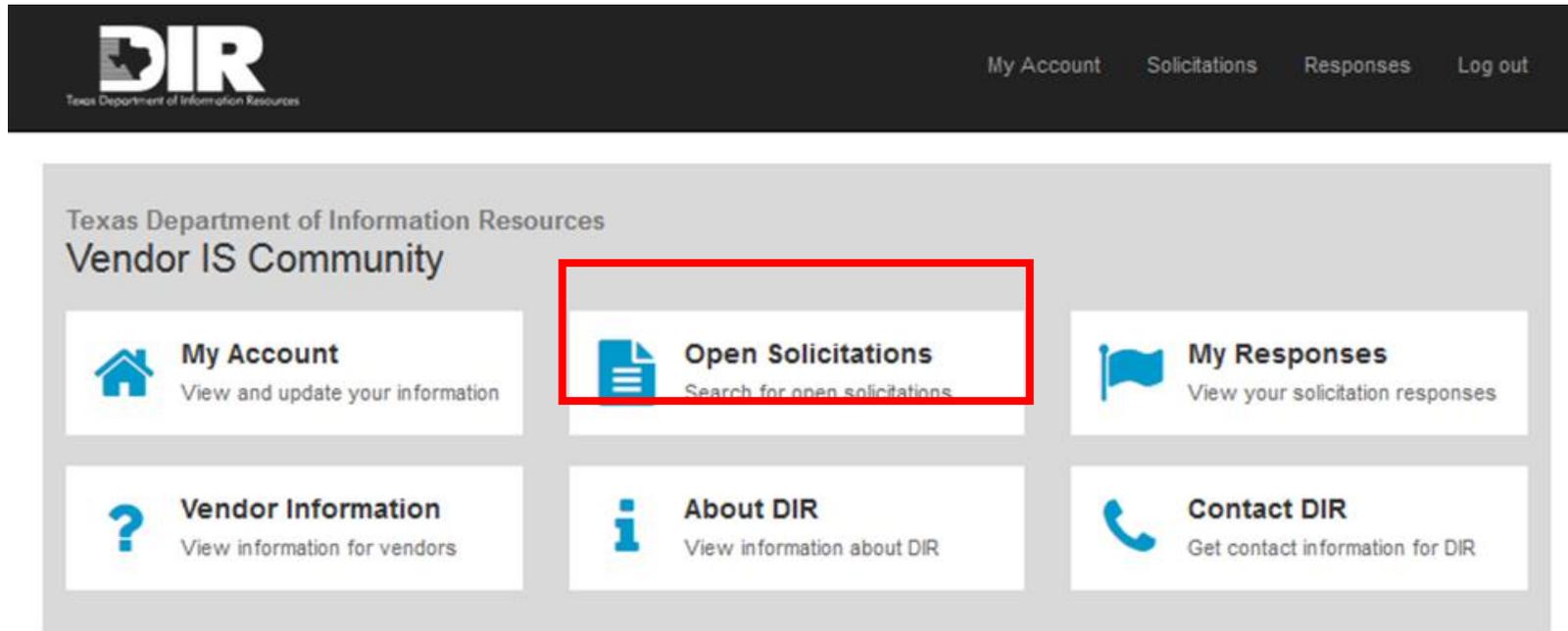
- Any Vendor responding to this RFO must submit their response through the BidStamp Vendor Information System (VIS)
- Before users can access any of the BidStamp VIS portal functionality, they will be required to provide login credentials to access a new or existing account. Vendors will access the BidStamp VIS Portal via <http://dircommunity.force.com/BidStamp> and enter in their access credentials.
- If a Vendor does not yet have login credentials, it will request one by clicking on “Are you a vendor and need to request an account?” button that is located on the login page.

Bid Submittal

- Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact DIR at the point of contact in section 4.1 of this solicitation. Please allow at least five business days for a response.

Responding to a Solicitation

After Vendor account is enabled, Vendor will submit and manage RFO responses from the BidStamp VIS portal.



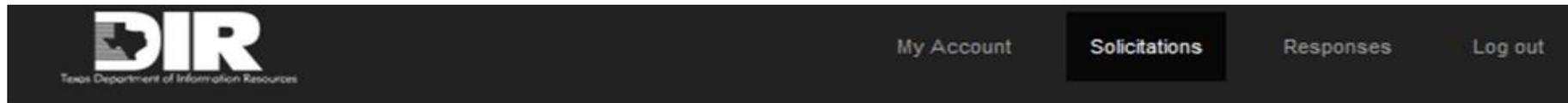
The Vendor BidStamp Guide and the presentation are posted on DIR's website on the Information For Vendors page.

<http://dir.texas.gov/View-Information-For-Vendors/Landing.aspx>

Creating a New Response

To create a new response:

1. Log in to the VIS portal and select the “Open Solicitations” tile
2. Click on the “RFO Number” (**DIR-TSO-TMP-417**) of the solicitation you want to respond to
3. You will be navigated to the “RFO Number” detail page



All Open Solicitations

Filter

RFO Number *	RFO Description	Solicitation Status	Phase	Type	Date/Time Respo...	Question Submi...
DIR-TSO-TMP-266	testMadan	Posted	RFI - Posted	Cooperative	5/24/2017 9:18 AM	4/30/2017 9:18 AM
DIR-TSO-TMP-267	test	Posted	Posting	Cooperative	11/8/2017 9:49 AM	1/9/2017 6:13 AM
DIR-TSO-TMP-293	Request for Widg...	Posted	Posting	Cooperative	3/31/2017 10:24 AM	3/15/2017 9:52 PM
DIR-TSO-TMP-295	Test RFO Title	Draft	Posting	Cooperative	3/31/2017 2:11 PM	3/13/2017 2:13 PM
DIR-TSO-TMP-296	Dell-branded Prod...	Posted	Posting	Cooperative	4/30/2017 1:47 PM	3/17/2017 10:01 AM
DIR-TSO-TMP-297	RFO		Posting	Cooperative	3/15/2018 6:32 AM	

Creating a New Response, cont.

 My Account Solicitations Responses Log out

RFO Number
DIR-TSO-TMP-473

RFO Number Detail [Respond To Solicitation](#) [Ask A Question](#) [Subscribe to Solicitation](#) [View Solicitation Documents](#)

Actual Start Date Posting	5/15/2017	Vendor Conference Date	5/25/2017 2:00 PM
Question Submission Deadline Date	5/31/2017 2:00 PM	RFO Answers to Questions Deadline Date	6/7/2017 5:00 PM
Date/Time Responses Due	6/15/2018 2:00 PM	Actual Start Date Evaluation	6/16/2017

New Fields

Solicitation Status	Posted	Type	Cooperative
---------------------	--------	------	-------------

RFO Questions

No records to display

This page will display important deadlines for the solicitation and list any questions the Vendor has submitted.

Buttons discussed on the next slide.



Creating a New Response, cont.

RFO Number Detail Button Description:

- **Respond to a Solicitation (or View Response):** Create a new response or view a response that is in-progress. If a response has already been created or started, this button will read as **“View Response”** and allow you to resume your progress on an existing RFO response.
- **Ask A Question:** Submit a question to be reviewed by a DIR resource. Questions can be submitted up until the “Question Submission Deadline date” indicated in the RFO document and on the detail page (January 30, 2018 by 2:00 P.M. CT).
- **Subscribe to Solicitation:** Subscribe to a solicitation if you would like to receive addendum notifications. To subscribe to the solicitation, you must select the “Subscribe to Solicitation” button AND have enabled your contact to [“Receive Notifications”](#). *(reference slide 12 of this presentation “Creating A New Response”)*
- **View Solicitation Documents:** Navigate to the ESBD posting for a solicitation and view the solicitation’s documents.

Respond to a Solicitation

DIR Texas Department of Information Resources

My Account Solicitations Responses Log out

RFO Response
R0006029

Add your documents below (400MB max size). Click the "Submit" button once all documents have been added.

Please review the ESBD posting to ensure you have provided all the necessary documents in your submission. Also, please verify the information on the page is correct before submitting. Once submitting your response, you will be unable to make changes unless you withdraw your response completely and restart the submission process.

RFO Response Detail

RFO Number	DIR-TSO-TMP-470	Status	In Progress
Submission Date		Vendor	Tech Widgets-RMS
Submitted By		Actual Start Date Posting	5/15/2017
Vendor Conference Date	5/25/2017 2:00 PM	Question Submission Deadline Date	5/31/2017 2:00 PM
RFO Answers to Questions Deadline Date	6/7/2017 5:00 PM	Date/Time Responses Due	6/15/2018 2:00 PM
Actual Start Date Evaluation	6/16/2017		

Delete Submit Ask A Question Create Pricing Form
Add HUB Subcontracting Form

RFO Response Documents New

No records to display

Reference forms are being sent via BidStamp as a courtesy. DIR will not be responsible if the form is not received by the vendor for any reason. It is solely the vendor's responsibility to ensure that the reference party receives the request.

Vendor References New

No records to display

"RFO Response Page" buttons:

- **Delete:** Delete all information that has been uploaded and the response record before the response has been submitted. **Note:** Once the response is submitted, Vendor must use the **Withdraw** button that will appear upon solicitation submission.
- **Submit:** Submits the response record and all associated information. *(reference Vendor Guide Section 5.7)*
- **Ask A Question:** Questions can be submitted up until the "Question Submission Deadline date" indicated in the RFO document and on the detail page. *(reference Vendor Guide Section 5.6)*
- **Add (or Edit) HUB Subcontracting Form:** Complete an automated version of the HSP form. Note: **Vendors must also print, sign, and upload the signed HSP.** *(reference Vendor Guide Section 5.4)*
- **Create Pricing Form:** Create a pricing form to submit pricing information for your response *(reference Vendor Guide Section 5.5)*
- **New (RFO Response Documents):** Upload required files indicated in the RFO posted on the ESBD *(reference Vendor Guide Section 5.2)*
- **New (Vendor References):** Submit a new reference's email address and opt for the system to automatically send the vendor a reference request *(reference Vendor Guide Section 5.3)*

- The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide Hewlett Packard Manufacturer Branded Hardware, Software Cloud, and Related Services and Services to the State of Texas, acting by and through the Department of Information Resources (DIR).
- DIR may make multiple awards from this RFO.

RFO Contents

Bid Package 1 – RFO DIR-TSO-417 (contains Exhibits A, B, C, & D)

Bid Package 2 – Pricing List Sample

Bid Package 3 – DIR Sample Contract Product Contract with Leasing Options

Bid Package 4 – Standard Terms and Conditions for Product Contracts

Bid Package 5 – Master Operating Lease Agreement

Bid Package 6 – Master Lease Agreement

Bid Package 7 – Vendor References

Bid Package 8 – Voluntary Product Accessibility Template (VPAT)

Bid Package 9 – Policy Driven Adoption Assessment (PDAA)

Bid Package 1

- Bid Package 1 – RFO DIR-TSO-417
 - Vendor Information System (VIS) Portal - BidStamp
 - Scope
 - General Information
 - Submission requirements, etc.
 - Evaluation, Negotiations, and Award
 - Exhibit A, Vendor Information Form
 - Exhibit B, Vendor History and Experience
 - Exhibit C, Contract Marketing and Support Plan
 - Exhibit D, – Historically Underutilized Business (HUB) Subcontracting Plan (The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal.)

Section 3. Scope

DIR intends to contract with qualified Vendors to provide Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services, including but not limited to:

- **Products may include but are not limited to:**
 - All Hewlett Packard branded product categories, including but not limited to desktops, laptops, printers, servers, and the related accessories, software, and/or supplies applicable to each product category.
- **Related Services may include but are not limited to:**
 - implementation, maintenance, training, application enhancement and other Related Services.
- **Services may include but are not limited to:**
 - Hewlett Packard Manufacturer hosted or cloud services as well as Hewlett Packard Manufacturer Branded mobile applications and document management services. Vendors are also encouraged to offer multiple OS, database and client platforms such as Windows, Linux, Oracle, SQL Server, iOS, Android or Open Source along with any complementing data analysis tools, if available.

RFO Scope

- **Hewlett Packard Manufacturer Branded Products may include, but are not limited to:**
- Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Products and Services, including but not limited to HP Inc.'s and Hewlett Packard Enterprise Company (HPE) brands such as:

HP NonStop

ProCurve

Opencall

Jet Advantage

Vertica

SCITEX

3PAR

Aruba

LeftHand

Troy

Fortify

Tipping Point

ArcSight

RFO Scope

- **Related services** are any value-added service that Vendor may perform as related to the products proposed in Section 3.1. Related services include but are not limited to: product installation, maintenance and technical support, project management, managed services and product training. Any Vendor offering product-related services must submit a description of those services and the related pricing in the Automated Pricing Form in the BidStamp VIS.
- **Third Party Products** All third party products will be awarded at the discretion of DIR. Signed letter(s) from the Manufacturer/Publisher certifying that Respondent is an authorized reseller of Hewlett Packard Manufacturer's/Publisher's branded products and/or cloud services to DIR Customers and may sell such products under the terms and conditions of a DIR Contract, in support of Respondent's response. A Partner Certification will not be sufficient.

RFO Scope - continued

- **Dealer or reseller who will sell directly to DIR Customers through a Co-op Contract.** Respondents to this RFO must supply a signed (by hand or digital such as DocuSign) letter from the Manufacturer/Publisher (Hewlett Packard) certifying that Respondent is an authorized reseller of Hewlett Packard Manufacturer's/Publisher's branded products and/or cloud services to DIR Customers and may sell such products under the terms and conditions of their own DIR Contract, in support of Respondent's response. Signed letters of authorization must be submitted with Respondent's proposal. **Unsigned letter(s) of authorization, typed signatures or the failure to submit the letter(s) with Respondent's response, may result in elimination of the Vendor from the solicitation process.**

- **Emerging Technology:**

DIR reserves the right to consider the addition of Hewlett Packard Manufacturer Branded Hardware, Software and Related Services and Services for emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of DIR-TSO-TMP-417.

Vendor may propose such products and related services throughout the term of the contract. In order to meet the needs of DIR customers, DIR may request the addition of products and services within scope of DIR-TSO-TMP-417 by augmenting the original solicitation through a competitive bidding process. Pricing and terms will be negotiated upon DIR agreement. Any determination will be at DIR's sole discretion and any decision will be final.

Section 3.6.3 Contract Term and Automatic Renewal

The term of any Contract awarded from this RFO shall be **two (2) years** commencing on the last date of approval by DIR and Vendor.

NEW!

The contract will **renew automatically in two-year increments for two (2) additional terms** under the same Terms and Conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

RFO Schedule

- Section 4.3.1 Anticipated Schedule:

Date/Time	Activity
01/12/2018	Publish RFO on Electronic State Business Daily
1/24/2018 9:00 AM (CT)	Optional Vendor Conference
01/30/2018 2:00 PM (CT)	Deadline for submitting questions
02/09/2018 5:00 PM (CT)	Estimated deadline for posting answers to questions on the ESBD
02/26/2018 2:00 PM (CT)	Deadline for DIR to receive Vendor references
02/26/2018 2:00 PM (CT)	Deadline for submitting responses to RFO
2/27/2018 – until completed	Evaluation of responses, oral presentations (if requested), negotiation and contract execution

Bid Package 1 – Exhibits A, B, & C

Exhibit A, Vendor Information

- This form must be **filled out in its entirety** and **signed by an officer or agent empowered to contractually bind the Respondent**. Complete cancelled contract references if applicable.

Exhibit B, Vendor History and Experience

- Respondent must provide a detailed response to each question detailing the Vendor's history and experience in providing the products and services proposed.

Exhibit C, Contract Marketing and Support Plan

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

Exhibit D - HUB Subcontracting Plan (Bid Package 1)

*The HSP form is automated and should be submitted in BidStamp.

Exhibit D – HUB Subcontracting Plan (Bid Package 1)

- DIR encourages all respondents to seek Historically Underutilized Business (HUB) subcontractors and maximize HUB participation in their bids.
- Responses submitted without a current HUB Subcontracting Plan (HSP) provided in the RFO, will be **disqualified per TAC Rule §20.285**
- All respondents, **HUBs and Non-HUBs**, are required to submit a completed HSP
- The HSP form includes specific instructions for meeting the Good Faith Effort requirements
- Vendors must complete a **new** HUB Plan and a good faith effort for this procurement

The HUB Goal for this RFO is 21.1%

- METHOD A (Attachment A) - If you are subcontracting and you are meeting or exceeding the HUB Goal for this RFO, you will complete Method A.
- Include all VID numbers for each vendor, all estimated dollar amounts and percentages for each vendor.

METHOD B (Attachment B) - If you are subcontracting, and are not going to meet the HUB Goal of 21.1% you will complete Method B.

- **Provide written notification** of subcontracting opportunity listed to at least three State of Texas certified HUBs
- **Provide written notification** of subcontracting opportunity to at least (2) minority or women's trade organization or development center
- Allow no less than seven (7) working days from their receipt of notice for HUBs to respond (keep delivery receipt emails).
- **Note:** Attach supporting documentation (letters, fax transmittals, email, etc.) demonstrating evidence of the good faith effort performed with RFO submittal

If not subcontracting, your response must contain a detailed explanation demonstrating HOW your company will fulfill the entire contract with its own resources

- Self-Performance Justification must be provided in the space provided in SECTION 3, do not reference sections in the RFO

Bid Package 1 – HUB Subcontracting Plan

You may contact DIR's HUB Department for assistance in completing your HUB Subcontracting Plan (HSP) up to **seven (7) working days** before the RFO submittal.

Lynn Sanchez
512-463-9813

Email: lynn.sanchez@dir.texas.gov

or

dir.hub@dir.texas.gov

Bid Packages 3 and 4

- Bid Package 3 – Sample Contract for Product Contract with Leasing Options
- Bid Package 4 - Standard Terms and Conditions for Products and Related Services Contracts
- **No exceptions** may be taken to certain terms as indicated on the Standard Terms and Conditions
- **Any exception must be listed in Bid Package 1 , Exhibit A, Question 11.**

Pricing: Product and Third Party Product



- **Vendors must submit product pricing and third-party product pricing on DIR's Automated Pricing Form in the BidStamp VIS.**
- **Bid Stamp – Vendors will need to enter the following items:**
 - **Brand**
 - **Product, Related Services and/or Services Category**
 - **Product Description**
 - **DIR Customer Percent (%) Discount off MSRP**

Product and Third-Party Product Pricing

- Vendors must offer only one discount for each Product Category or Product Subcategory listed in Sample Bid Package 2 as applicable to the Vendor's offering. Third Party is considered a single category.
- The discount for each product category will be applied to all products within the product category to determine the net DIR Customer price.
- With the exception of Volume Discounts, all Product Category discounts must be entered into DIR's Automated Pricing Form in the BidStamp VIS.

Pricing: Product

Department of Information Resources
Request for Offer DIR-TSO-TMP-417
Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services Discount Sheet
BID PACKAGE 2 - PRICING SHEET

**SAMPLE ONLY. All Product Category Discounts must be entered into DIR's Automated Pricing Form
DO NOT SUBMIT PRICING ON THIS EXCEL SPREADSHEET.**

Hewlett Packard Manufacturer BRANDED PRODUCTS

BRAND	PRODUCT CATEGORY	Product Description	MSRP	DIR Customer Discount % off MSRP
<i>EXAMPLES for use. Respondent must enter the Product Category (green highlight) in BidStamp VIS, exactly as written below. Failure to do so may result in Respondent's bid not tabulating correctly.</i>				
Hewlett Packard	Desktops			
Hewlett Packard	Workstations			
Hewlett Packard	Servers			
Hewlett Packard	Storage			
Hewlett Packard	Networking			
Hewlett Packard	Thin Clients (inc. Options & Accessories)			

Instructions Pricing Sheet Third Party Products Volume Discount

Type here to search 3:55 PM 1/23/2018

Pricing: Third-Party Product

Department of Information Resources
 Request for Offer DIR-TSO-TMP-417
 Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services Discount Sheet
 BID PACKAGE 2 - PRICING SHEET

**SAMPLE ONLY. All Product Category Discounts must be entered into DIR's Automated Pricing Form
 DO NOT SUBMIT PRICING ON THIS EXCEL SPREADSHEET.**

Hewlett Packard Manufacturer BRANDED PRODUCTS

BRAND	PRODUCT CATEGORY	Product Description	MSRP	DIR Customer Discount % off MSRP
<i>EXAMPLES for use. Respondent must enter the Product Category (green highlight) in BidStamp VIS, exactly as written below. Failure to do so may result in Respondent's bid not tabulating correctly.</i>				
Hewlett Packard	Desktops			
Hewlett Packard	Workstations			
Hewlett Packard	Servers			
Hewlett Packard	Storage			
Hewlett Packard	Networking			
Hewlett Packard	Thin Clients (inc. Options & Accessories)			
Hewlett Packard	Monitors			

Services

- Vendors will enter % Discount off MSRP in **Bid Package 2 spreadsheet, on the DIR Customer Discount tab.**
- Vendor will **upload the Bid Package 2 spreadsheet** into BidStamp VIS with Vendor's response.

Pricing - Services

SERVICES			
BRAND	SERVICE DESCRIPTIONS	Product Description	MSRP
Hewlett Packard	<i>EXAMPLE: Cloud Hosting</i>	Cloud Hosting Monthly	\$ 100
Hewlett Packard	Services		
	(ex. Technical Services, Managed Services, Device as a Service (DaaS), Customization and Configuration, Vulnerability Assessment, System Capability and Stress Testing)		

Pricing – Volume Pricing

Volume Pricing

- DIR encourages Vendors to offer VOLUME pricing for specific Products and on the SAMPLE Bid Package 2 spreadsheet titled, “Volume Discount.”
- In addition to VOLUME pricing for specific Products, DIR encourages Vendors to propose increased discount based on total statewide aggregate contract sales for Products.
- Vendors will enter Volume Discounts in Bid Package 2 spreadsheet, on the Volume Discount tab. **Vendor will upload the Bid Package 2 spreadsheet for Volume Discounts into BidStamp VIS with Vendor’s response.**

Pricing- Volume Pricing

Department of Information Resources
 Request for Offer DIR-TSO-TMP-417
 Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services
 BID PACKAGE 2 - PRICING SHEET

COMPANY NAME: _____

VENDOR SHALL ENTER VOLUME DISCOUNTS IN THIS BID PACKAGE 2 AND UPLOAD THE SPREADSHEET INTO THE BIDSTAMP VIS WITH VENDOR'S RESPONSE. VENDOR MAY ALTER THE VOLUME TYPE AS NEEDED FOR PRODUCT CATEGORIES LISTED.

VOLUME DISCOUNTS- HP BRANDED PRODUCTS AND SERVICES

Type of Volume	Product Category	DIR Customer Discount % off MSRP
By QTY		
1-99 units		
100-500 units		
500+ units		
Per Transaction (e.g. Purchase Order)		
Per Dollar Volume Threshold		
Total Statewide Aggregate Contract Sales		

Threshold and SOW Requirements

Beginning September 1, 2017, the Threshold Requirements for IT Commodities (Hardware, Software and Services) are as follows:

Contract Value	Number of DIR Vendors
\$50,000 or less	May award directly to DIR Vendor of choice
More than \$50,000 but not more than \$1 million	Three (or all DIR Vendors in a category with less than three vendors)
More than \$1 million but less than \$5 million	Six (or all DIR Vendors in a category with less than six vendors)
More than \$5,000,000	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts

State agencies procuring more than \$50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

Bid Package 7 – Vendor Reference Questionnaire



Bid Package 7 - References

- The vendor must provide the vendor reference questionnaire directly to companies/government agencies as specified in Section 3.7.4 of the RFO.
- Instructions are included in Bid Package 7.
- DIR is not responsible for undeliverable e-mails or for non-responsive references.
- **References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation.**
- The Vendor may NOT submit the reference form to DIR.
- **Forms submitted directly by the vendor to DIR will receive a score of zero.**

Bid Package 7 – Vendor Reference Questionnaire



VENDOR REFERENCES

Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and Related Services and Services
Request for Offer DIR-TSO-TMP-417

REFERENCE DEADLINE TO DIR: No later than 02/26/2018 2:00 PM

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:

HPBranded417.RFO@DIR.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name _____

Insert Type of (e.g. Software) Product/Services Category _____

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

HPBranded417.RFO@DIR.texas.gov.

Rating: (0) Unsatisfactory; (1) Marginally 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 Hewlett-Packard Manufacturer Branded Hardware, Software, Cloud and

Electronic and Information Resources (EIR) Accessibility Forms



Texas state agencies and institutions of higher education are required to procure, develop, and use EIR that is inclusive and accessible to people with disabilities.

This RFO includes the following accessibility related forms:

- **Voluntary Product Accessibility Template – Bid Package 8**
- **Policy Driven Adoption for Accessibility (PDAA) - Bid Package 9**
 - Required for all vendors

What is a VPAT?

- A standardized template used in the industry to document product accessibility conformance to U.S. Section 508
 - manufacturer-generated, product-specific document using the [VPAT template](#)
 - provides relevant and specific information about compliance with Section 508 Standards
- Helps procurement and contracting officials make preliminary assessments of the degree of accessibility compliance in a vendor's EIR.
- Allows procurement staff and others to evaluate accessibility compliance consistently across multiple vendors.

The VPAT Form

- VPAT documents are formal statement of compliance by your organization.
- VPATs should be filled out by an individual that has knowledge of the product accessibility.
- VPAT claims should be backed by an audit trail.
- VPAT claims should be based on the demonstrable accessibility of a product. (i.e.. accessibility testing).
- Inaccurate claims of compliance could generate end user complaints under the Americans with Disabilities Act.

The VPAT Form

- VPAT forms can either be submitted with the response or prior to award.
- The Respondents that are selected for negotiation must submit completed VPAT form or links to complete VPATs located on manufacturer websites prior to an award for the proposed product or product family.
- Instructions on how to complete a VPAT[®] can be found on [DIR's website](#)

Bid Package 9 - Policy Driven Adoption for Accessibility (PDAA)

Why is DIR requesting information on vendor accessibility policy?

- **Texas agencies and institutions of higher education are required to procure or develop accessible offerings. Gaps in vendor internal governance systems and leadership commitment inhibit the ability to meet these standards for their products/services.**
 - Making vendor's IT offerings accessible to people with disabilities requires commitment in many areas of an organization. PDAA data helps DIR better understand the commitment and progress by vendors in making their offerings accessible.
- **Accessibility policy maturity provides insight into vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings, which can increase the confidence in accuracy of vendor's accessibility documentation.**
 - A mature accessibility policy implementation signals that a vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner.

Bid Package 9 - Policy Driven Adoption for Accessibility (PDAA)

How will this information be used?

- The completed form will establish a baseline for where a vendor stands with regard to its accessibility policy.
 - illustrates the depth and maturity of the vendor's support for accessibility policy and practices as illustrated via the PDAA Maturity Model.
- The questionnaire may also be included in future solicitations so that progress can be assessed.
- Vendors 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.

Additional Information regarding EIR Accessibility and VPAT Forms



- **EIR Accessibility Website**

<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=36>

- **PDAA Maturity Model**

<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx>

- **Additional Information**

<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement>

Jeff Kline
Program Director
Statewide Electronic and Information Resources (EIR)
Accessibility

Email: jeff.kline@dir.texas.gov

Mandatory Submissions

RFO Section 4.7.2 – Mandatory Response Contents

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

- Exhibit A – Vendor Information (**SIGNED**)
- Exhibit A – **Canceled Contracts** – Attachments 1 and 2 (if applicable)
- Exhibit B – Vendor History and Experience
- Exhibit C – Contract Marketing and Support Plan
- Exhibit D – HUB Subcontracting Plan (**SIGNED**)
- Pricing – Bid Package 2 (Automated Pricing Form in BidStamp VIS)
- Signed Letters of from Manufacturer/Publisher
- Policy Driven Adoption Assessment (PDAA) – Bid Package 9
- Vendor’s service or licensing agreement, etc. (if any)
- Any addendum requirements – check the ESBD for these; Vendors do not receive notice

Evaluation Criteria

- **RFO Section 5.1 – Evaluation of Responses**

- Incomplete response package will be rejected
- The financial review and **HSP** review are on a pass/fail basis.
 - **Failure to provide a DUNs number will result in your response being disqualified.**
- Only responses that receive the passing grade will proceed to the next evaluation phase.

- **RFO Section 5.2 – Evaluation Criteria**

- Pricing – 45%
- Vendor History and Experience and Vendor References – 30%
- Vendor’s Contract Marketing and Support Plan – 20%
- Computer Equipment Recycling Program Preference (Item 15, Bid Package 1, Exhibit A) – 5%

Questions

- Break (10 minutes)
- Reference the Section Number and page number with your submitted question.
- Questions answered today are unofficial until posted on the ESBD.

Reminder

- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-417 on the Electronic State Business Daily, <http://www.txsmartbuy.com/sp>
- It is the responsibility of Vendors to monitor the EBSD web site for addenda.

Conference Closing

- All questions, inquiries must be directed to Carrie Cooper

Carrie Cooper

Phone: 512-936-2353

Fax: 512-936-6896

Email: carrie.cooper@dir.texas.gov

Thank you for attending today's Pre-Bid Conference and
webinar!

Texas Department of Information Resources
Request for Offer: DIR-TSO-TMP-417
Vendor Conference Sign-in Sheet
January 24, 2018 / 9:00 A.M. (CT)

PLEASE PRINT LEGIBLY

REPRESENTATIVE	COMPANY NAME	E-MAIL ADDRESS	HUB STATUS
Nancy Lenkowski	HP Inc.	Nancy.Lenkowski@hp.com	None
Jeremy Nicholas	HP Inc.	Jnicholas@hp.com	None
Edith Parmer	HP Inc.	Edith.Parmer@hp.com	None
Chad Price	Hewlett Packard Enterprise	Chad.Price@hpe.com	None
Mark Remington	Long View Systems	Mark.Remington@Lvs1.com	None
Mary Reuss	HPE	Mary Reuss@hpe.com	None



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Addendum # 1

This addendum to Request for Offer DIR-TSO-TMP-417:

1. Eliminates a Header instruction in Bid Package 2, Pricing Index, Tab 3.
 2. Contains questions and answers submitted in writing at the Pre-Bid Vendor Conference and Webinar, to the Purchasing Point of Contact and to the BidStamp Vendor Information System (VIS);
 3. Provides the Microsoft PowerPoint presentation from the Pre-Bid Vendor Conference held on January 24, 2018; and
 4. Provides a Sign-In Sheet of attendees to the Pre-Bid Vendor Conference and webinar.
-

1. The following header instruction in Bid Package 2, Pricing Index, Tab 3, Third Party Products is hereby deleted without replacement:

“All Third Party HARDWARE AND SOFTWARE Product Descriptions and Discounts must be entered into DIR’s Automated Pricing Form in the BidStamp VIS. Do not submit Third-Party Product Descriptions and/or Discounts on this Excel Sheet”.

2. QUESTIONS AND OFFICIAL ANSWERS:

1. **Question:** Can you show us samples of how we enter the pricing sheet?

Answer: For screen shots and instructions, refer to DIR’s main web page [Home](#) > Information for Vendors [Information for Vendors](#) > and scroll to the bottom of the page to the “*DIR BidStamp Training Guide: Vendor Information System Portal*”. Section 5.5 of the Training Guide, which begins on page 28, details entering a pricing sheet.

2. **Question:** Should Vendor respond to and include Bid Package 1 RFO Products as part of its submission? If so, where should it be uploaded in BidStamp VIS since it is not included in the list of Document Types?

Answer: If you are offering Products as part of your submission, **there are two places that you will submit your pricing offerings. One is the Automated BidStamp VIS Pricing Form. In that form, you will organize and input your product into categories and subcategories. The other place that you will submit the products that you are offering is in the Bid Package 2, tab 2 Pricing Sheet. In this pricing sheet, continue organizing by category and subcategory but detail every product that you are offering, by SKU or Part Number. In order to be considered for contract award, each row must be completed in its’ entirety in this worksheet.**

3. **Question:** Can we provide our own Third-Party Product listing or must it be entered by category?

Answer: Vendors will enter Third Party products in Bid Package 2, Pricing Sheet in the Third Party Products tab. Vendor will upload the completed Bid Package 2 Pricing Sheet for Third Party Products worksheet into BidStamp VIS with Vendor’s response. Refer to the answer to Question 2.



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4. Question: BidStamp VIS Pricing Form – Please confirm that third-party products are to be entered as a separate single category, which may be broken into subcategories with a high-level description and discount for each subcategory. If not, may Vendor enter a sample product description and MSRP for each third-party manufacturer in each subcategory?

Answer. On the Automated BidStamp VIS Pricing Form, Third-Party Products are a single Category. Subcategories may be broken at a higher level (such as hardware or software) and Categories must include an Average Discount Range %. In addition, each particular product within the subcategories must be submitted in accordance with Bid Package 2, Tab 3 (which is an example price sheet for Third Party Products).

5. Question: You also want Third Party Products at the category level? There's quite a bit of redundancy on Third Party products across categories.

Answer: Refer to the answer to Question 4. The purpose of listing Third Party products is to provide transparency of product and pricing (discount) information.

6. Question: Can we create or place all our Third-Party products into a Third-Party Category?

Answer: Refer to the answers to Questions 4 and 5.

7. Question: It appears you're looking for SKU's of HP branded products by category to create a price list. Is that correct?

Answer: The purpose of pricing to is for evaluation and to provide transparency of product and pricing (discount) information on contract Pricing lists. Individual SKU's should be listed line by line by uploading Bid Package 2 spreadsheet into BidStamp VIS with Vendor's response, listing each part number that the Vendor wishes to offer. Refer to answers to Questions 2 - 6.

8. Question: Can we submit pricing with our own spreadsheet or do you require DIR's form to be used?

Answer: The Automated Pricing Form in the BidStamp VIS portal must be submitted with all categories and subcategories that you propose to offer. Pricing for Categories and Subcategories (families of product) that are not proposed may not be offered on a resultant contract award. On the Automated Pricing Form in the BidStamp VIS portal, pricing for Categories and Subcategories for the products that you offer should average the range of Discount % off of MSRP per Category (i.e., for a range of 20.00% through 31.50% within a Category, enter 25.75%). Additionally, individual SKU's within each Category and Subcategory should be listed line-by-line per product and submitted as an attachment, formatted and uploaded on the Bid Package 2 spreadsheet into BidStamp VIS with Vendor's response. Products that are not detailed on this spreadsheet may not be offered on a resultant contract award. Refer to answers to Question 2-7.

9. Question: BidStamp VIS Pricing Form – May Vendor enter subcategories within the sample categories shown on the Pricing Sheet, e.g., within the Desktops category, Vendor would list an Entry Level Desktops subcategory, Mid-Range Desktops subcategory, etc.? If so, is it acceptable for Vendor to enter a high-level description and discount for the subcategory, and leave the MSRP, product number and unit



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price fields blank? If that is not acceptable, may the product description, product number, MSRP and unit price reflect a sample product from the subcategory?

Answer: Vendor may add as many subcategories as they identify as existing within their unique business line offering (often called a Family of Products) in order to organize their offering. See the answer to Questions 4-9 regarding pricing input in the BidStamp VIS Automated Pricing form and the required Bid Package 2 Pricing Sheet (Excel worksheet) that should be attached to your submission. This Price Sheet will contain details of each individual product offered. Refer to the answer to Questions 2-8.

10. Question: BidStamp VIS Pricing Form – In the Related Services section, may Vendor leave Product Description, Product Number, MSRP, Service Zone and Unit fields blank, since the services are listed by category/subcategory and not by individual service SKU?

Answer: In the Automated BidStamp VIS Pricing Form the Description field should contain summarized category and subcategory descriptors. The Product Number should provide identifying information such as “6100 Series” or “ProLiant Servers”. MSRP, Service Zone may be blank only on the Automated BidStamp VIS Pricing Form.

11. Question: Bid Package 1 RFO Products, Section 3.2 Related Services - Where in BidStamp VIS does Vendor upload the services descriptions?

Answer: Detailed Related Service descriptions should be offered in Bid Package 2, tab 2, Pricing Sheet. The bottom of the example tab has a subsection for Services. Refer to the answer to Question 4.

12. Question: Can we remove Categories we aren’t responding to or do we just respond with No Bid?

Answer: Your proposal should only include the products that you are offering to provide on the contract. In the Automated BidStamp VIS Pricing do not list a category if you are not offering it. In the Bid Package Pricing Sheet worksheets, do not list a category if you are not offering it.

13. Question: On the Volume Discount Pricing Sheet can we provide a discount range for the various volumes?

Answer: You should provide one discount percentage (not a range) for each level of Volume i.e. 100 – 300 Each @ 22.00%; for 301 – 499 Each @ 24.00%, etc. For more information, refer to the answer to Question 4.

14. Question: Regarding entering discounts, we have our discounts listed as higher level/product family such as “Entry Level Servers”. It will contain more than one product and one part number, so a MSRP/List Price can’t realistically be listed.

Answer: Categories and subcategories may be identified to reflect the organization of your company subcategory/family/product level, etc. As for MSRP, SKU’s, single discounts, refer to the answers to questions in this Addendum # 1.

15. Question: If Order Fulfiller = subcontractor, what does Reseller agent refer to?



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Answer: For the purpose of a DIR contract, Resellers and Order Fulfillers have been nominated by the contract holder and vetted by DIR's HUB Office to sell products under the terms and conditions of a DIR Contract on behalf of the contract holder.

For the purpose of HUB Subcontracting Plans, refer to Bid Package 1, Section 4.7.1 4) which states "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."

16. Question: Can we respond with text?

Answer: DIR does not understand the context in which you ask the question. You should respond per the examples and instructions provided in the RFO and the document that you are submitting in BidStamp VIS. For example., if the Header labeled "Discount Percentage (%) off of MSRP", you should enter "26.00%", not "twenty six percent (text)".

17. Question: Regarding filing a HUB plan/form: I've seen that we are going to fill out HUB forms online as well as upload a signed form. Previously when we needed to add more vendor/resellers than is allowed for (23) on the first page of the auto-fill form for Method A, we had to manually insert a page into .pdf form. If we are filling out the forms online, I'm assuming once we hit the end of the first Method A page another will be provided?

Answer: The number of lines available for entry on the BidStamp VIS portal will be unlimited.

18. Question: Will this presentation be made available for download after the meeting?

Answer: The Microsoft PowerPoint® presentation from the Pre-Bid Conference and webinar held on January 24, 2018 is provided as an attachment to this Addendum # 1.

19. Question: Regarding the DIR-TSO-TMP-417 Bid Package 8 VPAT.docx document, this is a blank reporting template used to record a products conformance to the US Section 508. It uses a reporting template that was created by ITIC which HPE has also adopted (with few minor edits to add our customer header and footer text). Texas has not had an issue in the past accepting the HPE version of a Section 508 product accessibility conformance report template. However, the US Section 508 standard used here was updated by the US Access Board in January 2017 and went into effect for all Fed agencies beginning January 13, 2018. HPE has adopted the new "Revised Section 508 standard" and replaced the legacy Section 508 standard with this newer one in our development and reporting. We have also gone with the VPAT 2.0 reporting format which the ITIC updated (from VPAT 1.0) as well. The template provided in the RFO documents is for the legacy (old) Section 508 standard and VPAT 1.0. Does this mean that the DIR has not yet moved to the newer standards or have the bid templates not been updated?

Answer: The updated VPAT 2.0 is fine and preferred because it covers WCAG 2.0 Success Criteria. DIR will be updating the link to the new version and will be requiring its use sometime in the near future.

20. Question: BidStamp VIS – Is there a way for Vendor to export or print and view the information it has entered for its response before hitting the "Submit" button? Since Vendor may not edit its response once submitted (without withdrawing and starting over), Vendor would like the opportunity to verify that



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everything has been entered and captured correctly within the BidStamp VIS system, and to generate an exact copy for Vendor's records.

Answer: Select Save after each line of data input (entry). This will save your input for review, revision, etc. until such time as you select Submit.

21. Question: BidStamp VIS Pricing Form - What do the "Manufacturer" and "Reseller" checkboxes refer to? Does this refer to whether Vendor is the manufacturer or reseller of the category offered? For example, Vendor would check "Reseller" for third party offerings? If not, please clarify.

Answer: Refer to Bid Package 1, RFO, Section 4.5.1 which defines a Manufacturer and a Reseller. If you are the manufacturer or publisher of the Hewlett Packard branded product, related service or service provider categories, indicate that you are the manufacturer. If not, and you are reselling the manufacturer product, identify yourself as Reseller.

22. Question: From Exhibit B, Vendor History and Experience. #4 question: It asks if any Texas agencies have bought our products in the past 12 months, if so to provide the entity names, total sales, quantity sold & discount % off List. Since the data is already available via the reports we are required to submit monthly, do we need to provide a summary report of the last 12 months?

Answer: You are required to provide the information requested in the RFO in your proposal. Your submission to the RFO document relies solely upon your responses to any information requested/required in the RFO.

23. Question: On page 5, reference Section 3. Scope, 3.1 Products, the solicitation states: "DIR intends to contract to provide Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Products and Services, including but not limited to HP Inc.'s and Hewlett Packard Enterprise Company (HPE) brands such as:" Vendor requests that DIR change this language to read: "DIR intends to contract to provide Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Products and Services, including but not limited to HP Inc.'s, Hewlett Packard Enterprise Company (HPE), Trend Micro, and Micro Focus Government Solutions (dba Entco Government Software, LLC.) brands such as:"A number of the items listed within the proposal (Vertica, Fortify, Tipping Point) fall under the Trend Micro or Micro Focus Brand. Because of this, Carahsoft believes that this change in language will provide additional clarity on the scope of the State's request.

Answer: DIR is not contemplating changing the title of the Request for Offer, "DIR Manufacturer Branded Hardware, Software, Cloud and Related Services and Services". The intent of the Hewlett Packard Branded solicitation is to contract for the complete list of Hewlett Packard products, services and solutions. Ownership of the brands noted in your question have changed hands due to acquisition, mergers or other entity reorganization actions since the development of the RFO was initiated. By this Amendment #1, the RFO DIR-TSO-TMP-417 hereby modifies the *examples* provided in Bid Package 1, Section 3, Subsection 3.1 to **delete** the following brands in the bulleted-list: Vertica, Fortify, and Tipping Point.

Example:

- ~~Vertica~~
- ~~Fortify~~
- ~~Tipping Point~~



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24. Question: BidStamp VIS - One of the Document Types listed in the list of documents Vendor may submit in BidStamp VIS is "Vendor Qualifications Form." Please clarify what this is.

Answer: This is a supplemental document that may, or may not, be used during negotiations for cloud services, if proposed. It is not a required/mandatory proposal submission.

25. Question: BidStamp VIS - One of the Document Types listed in the list of documents Vendor may submit in BidStamp VIS is "Price List." Please clarify what this is. Is it Vendor's pricelist of all products and services offered in its response? Is it the Bid Package 2 Pricing Index with the volume discount tab completed?

Answer: The Document Type "Price List" in the list of documents is an MS Excel file formatted and completed with all products per the associated worksheet examples in Bid Package 2, Pricing Index.

26. Question: Should Vendor respond to and include Bid Package 1 RFO Products as part of its submission? If so, where should it be uploaded in BidStamp VIS since it is not included in the list of Document Types?

Answer: DIR does not understand the entire context of the question. Bid Package 1 contains the RFO, Exhibits A, B, C and D. Exhibits A, B, C, and D exist as Automated BidStamp VIS Forms for you to complete. Refer to the answer to Question 30, below for additional information.

27. Question: Bid Package 1 RFO Products, Section 1.2.7 Exclusions - HP proposes to offer certain Apple products as part of a total seat management solution, for which HP is an authorized reseller. Apple products will not be offered outside of this solution. Understanding that HP's Apple seat management solution can only be sold by HP (not our Order Fulfillers) and that Education customers (K-12 and Higher Education) are excluded, can this solution be included in our offerings?

Answer: If the Apple products are part of a total identified solution, and not sold as single commercial, off-the-shelf products, they may be offered as solution components.

28. Question: BidStamp VIS Pricing Form – Should Vendor enter custom services in the Related Services section of the pricing form?

Answer: A Custom Service is considered a Service, and not a Related Service. Refer to the definition of Related Services defined in Bid Package 1, Section 3.2 which states, "Related services are any value-added service that Vendor may perform as related to the products proposed in Section 3.1. Related services include but are not limited to: product installation, maintenance and technical support, project management, managed services and product training. Any Vendor offering product-related services must submit a description of those services and the related pricing in the Automated Pricing Form in the BidStamp VIS". Note that the title of the RFO, Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and **Related Services and Services**, are distinct. Examples of a Service (and not a Related Service which supports a product) are Device as a Service (DaaS) / Seat Management, Cloud Services, etc.

29. Question: BidStamp VIS Pricing Form – Should care packs be entered within the Product section or the Related Services section of the BidStamp VIS pricing form? Care packs are standard service part



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numbers for uplifted/extended warranties, installation and other general services that are purchased with a product at the time of product purchase.

Answer: Care packs are considered Related Services. Refer to the answer to Question 28.

30. Question: Bid Package 1 RFO Products, Section 4.7.3 Accessibility of Electronic Response Documents - Vendors are instructed not to upload scanned documents in BidStamp VIS. May Vendor upload scanned signature pages?

Answer: Section 4.7.3 seeks to eliminate the submission of non-accessible common documents. As your question indicates, some documents such as signature documents will need to be scanned. Refer to Bid Package 1, Section 4.7.1 1) Exhibit A; 4) HUB HSP; and 6) Manufacturer Letters which identify those particular documents that are required to be scanned.

End of Addendum # 1



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Addendum # 2

This addendum to Request for Offer DIR-TSO-TMP-417:

1. Replaces Bid Package 1, Exhibit A, Item 18) Proof of Financial Stability language regarding Dun and Bradstreet D-U-N-S number.
2. Adds additional language to the answer to a question submitted in writing at the Pre-Bid Vendor Conference and Webinar, or the Purchasing Point of Contact or the BidStamp Vendor Information System (VIS).

-
1. Bid Package 1, Exhibit A Vendor Information, Item 18) is deleted and hereby replaced in its entirety with:

18) 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 may result in rejection of the response.**

Enter D-U-N-S Number:

2. The following Question numbered 23 and Answer addressed in Addendum # 1 is hereby deleted and replaced in its entirety:

23. Question: On page 5, reference Section 3. Scope, 3.1 Products, the solicitation states: “DIR intends to contract to provide Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Products and Services, including but not limited to HP Inc.’s and Hewlett Packard Enterprise Company (HPE) brands such as:” Vendor requests that DIR change this language to read: “DIR intends to contract to provide Hewlett Packard Manufacturer Branded Hardware, Software, Cloud and Related Products and Services, including but not limited to HP Inc.’s, Hewlett Packard Enterprise Company (HPE), Trend Micro, and Micro Focus Government Solutions (dba Entco Government Software, LLC.) brands such as:”A number of the items listed within the proposal (Vertica, Fortify, Tipping Point) fall under the Trend Micro or Micro Focus Brand. Because of this, Carahsoft believes that this change in language will provide additional clarity on the scope of the State’s request.



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Answer: DIR is not contemplating changing the title of the Request for Offer, “DIR Manufacturer Branded Hardware, Software, Cloud and Related Services and Services”. The intent of the Hewlett Packard Branded solicitation is to contract for the complete list of Hewlett Packard products, services and solutions. Ownership of the brands noted in your question have changed hands due to acquisition, mergers or other entity reorganization actions since the development of the RFO was initiated. By this Amendment #1, the RFO DIR-TSO-TMP-417 hereby modifies the *examples* provided in Bid Package 1, Section 3, Subsection 3.1 to delete the following brands in the bulleted-list: Vertica, Fortify, and Tipping Point.

Example:

- ~~Vertica~~
- ~~Fortify~~
- ~~Tipping Point~~

Vendors wishing to propose brands other than Hewlett Packard brands such as (as an example but not all inclusive) Micro Focus and Trend Micro brands, or other software products, including Software as a Service, and Enterprise Resource Planning Software Modules Products and Services may do so by responding to DIR-TSO-TMP-416 Software Products, Including Software as a Service, and Enterprise Resource Planning Software Modules Products and Services.

End of Addendum # 2