

**Notice of Meeting for the  
General Government and Finance Advisory Board  
of the City of Georgetown  
March 27, 2019 at 4:30 PM  
at 808 Martin Luther King Jr Street, Georgetown, TX 78626**

The City of Georgetown is committed to compliance with the Americans with Disabilities Act (ADA). If you require assistance in participating at a public meeting due to a disability, as defined under the ADA, reasonable assistance, adaptations, or accommodations will be provided upon request. Please contact the City Secretary's Office, at least three (3) days prior to the scheduled meeting date, at (512) 930-3652 or City Hall at 808 Martin Luther King Jr. Street, Georgetown, TX 78626 for additional information; TTY users route through Relay Texas at 711.

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**Legislative Regular Agenda**

- A Welcome new board members & review and discuss General Government and Finance Board (GGAF) purpose and bylaws – Tommy Gonzalez, Board Chair
- B Review of the City Council's Boards and Commissions Attendance Policy – Tommy Gonzalez, Board Chair
- C Discuss dates/times for future General Government and Finance Board (GGAF) meetings – Tommy Gonzalez, Board Chair
- D Review minutes from the March 6, 2019 General Government and Finance Advisory Board Meeting - Amy Janecka, Board Liaison
- E Discussion of Workday Project – Leigh Wallace, Finance Director
- F Discussion and possible recommendation to approve an ERP Project Manager/Testing Lead to assist with the Workday implementation utilizing the Texas Department of Information Resources (DIR) Information Technology Staff Augmentation Contract (ITSAC) with GTS Technology Solutions in the amount of \$216,000. --Leigh Wallace, Finance Director
- G Discussion and possible recommendation to approve a Finance Lead to assist with Finance tasks for the Workday implementation utilizing the Texas Department of Information Resources (DIR) Information Technology Staff Augmentation Contract (ITSAC) with GTS Technology Solutions in the amount of \$198,720.--Leigh Wallace, Finance Director
- H Discussion and possible recommendation to approve an ERP Project Lead/Enterprise Architect to assist with the Workday implementation utilizing the Texas Department of Information Resources (DIR) Information Technology Staff Augmentation Contract (ITSAC) with GTS Technology Solutions in the amount of \$415,200. --Leigh Wallace, Finance Director
- I Consideration and possible action to approve an annual appropriation of \$60,366 to Elster Solutions, LLC to renew software maintenance on the City's advanced metering infrastructure software. Chris Bryce, IT Director

**CERTIFICATE OF POSTING**

I, Robyn Densmore, City Secretary for the City of Georgetown, Texas, do hereby certify that this Notice of Meeting was posted at City Hall, 808 Martin Luther King Jr. Street, Georgetown, TX 78626, a place readily accessible to the general public at all times, on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_\_, and remained so posted for at least 72 continuous hours preceding the scheduled time of said

meeting.

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Robyn Densmore, City Secretary

City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Welcome new board members & review and discuss General Government and Finance Board (GGAF) purpose and bylaws – Tommy Gonzalez, Board Chair

**ITEM SUMMARY:**

Welcome new board members & review and discuss General Government and Finance Board (GGAF) purpose and bylaws – Tommy Gonzalez, Board Chair

**FINANCIAL IMPACT:**

N/A

**SUBMITTED BY:**

Tommy Gonzalez, Board Chair

**ATTACHMENTS:**

Description		Type
	Bylaws	Backup Material

**CITY OF GEORGETOWN  
GENERAL GOVERNMENT AND FINANCE ADVISORY BOARD  
BYLAWS**

**ARTICLE I. NAME AND PURPOSE**

**Section 1.1. Name.** General Government and Finance Advisory Board ("Board").

**Section 1.2. Purpose.** It is the purpose and intent of the Council to create an advisory board empowered to review and analyze the general government and finance activities of the City that include but are not limited to the following areas: Finance administration, including fiscal matters, debt and treasury management; accounting and financial reporting; purchasing; the Municipal Court; facilities maintenance including construction and renovation of City facilities; vehicle services; information technology; compensation and benefits; City insurance; and other related items as recommend by the City Manager, and to report, by official vote, their recommendations to the City Council.

**ARTICLE II. MEMBERSHIP**

**Section 2.1. Number of Members.** The Board will be comprised of five (5) Members.

**Section 2.2. Eligibility.** All Members shall reside in the corporate City limits or the extraterritorial jurisdiction of the City. Two Members, shall be Members of the City Council.

**Section 2.3. Appointment of Board Members.** Members of the Board shall be appointed pursuant to and in accordance with the City Charter.

**Section 2.4. Terms of Office.** Generally, terms of office for each Member shall be two (2) years. Generally, a Member may serve two (2) consecutive terms. Refer to *Ordinance Section 2.36.030A* for additional provisions regarding terms of office.

**Section 2.5. Vacancies.** Vacancies that occur during a term shall be filled as soon as reasonably possible and in the same manner as an appointment in accordance with the City Charter. If possible, the Member shall continue to serve until the vacancy is filled. An appointment to fill a vacated term is not included as a term for purposes of counting consecutive terms.



**Section 2.6. Compensation and Expenditure of Funds.** Members serve without compensation. The Board and its Members have no authority to expend funds or to incur or make an obligation on behalf of the City unless authorized and approved by the City Council. Members may be reimbursed for expenses authorized and approved by the City Council and the Board.

**Section 2.7. Compliance with City Policy.** Members will comply with City Ordinances, Rules and Policies applicable to the Board and the Members, including but not limited to *Ethics Ordinance Chapter 2.20* and *City Commissions, Committees and Boards Ordinance Chapter 2.36*.

**Section 2.8. Removal.** Any Member may be removed from their position on the Board for any reason, or for no reason, by a majority vote of the City Council.

### **ARTICLE III. BOARD OFFICERS**

**Section 3.1. Officers.** The Board Officers are Chairman, Vice-Chairman and Secretary. The Chairman is recommended by the Mayor and the City Council shall approve the recommendation by a vote of the majority of the Council during the annual appointment process. Should the Mayor fail to recommend a Chairman for each board, committee, or commission, and/or the Council fails to approve any Chairman recommended by the Mayor, a majority of the Council plus one may approve appointment of a Chairman to serve as Chairman without a recommendation of the Mayor. The other Board Officers are elected by a majority vote of the Members at the first meeting after the annual appointment process.

**Section 3.2. Terms of Office for Board Officers.** Board Officers serve for a term of one year. In the event of vacancy in the office of Chairman, the Vice-Chairman shall serve as Chairman until the City Council appoints a replacement Chairman. A vacancy in the other offices shall be elected by majority vote of the Members at the next regularly scheduled meeting, or as soon as reasonably practical for the unexpired term. If possible, a Board Officer shall continue to serve until the vacancy is filled.

### **Section 3.3. Duties.**

- a. The Chairman presides at Board meetings. The Chairman shall generally manage the business of the Board. The Chairman shall perform the duties delegated to the Chairman by the Board.
- b. The Vice-Chairman shall perform the duties delegated to the Vice-Chairman by the Board. The Vice-Chairman presides at Board meetings in the Chairman's absence. The Vice-Chairman shall perform the duties of the Chairman in the Chairman's absence or disability.
- c. The Secretary shall perform the duties delegated to the Secretary by the Board.

## **ARTICLE IV. MEETINGS**

**Section 4.1. Time and Date of Regular Meeting.** The Board shall meet once a month on the same week of the month, the same day of the week, at the same time, and at the same place. The regular date, time and place of the Board meeting will be decided by the Members at the first meeting of the Board after the annual appointment process.

**Section 4.2. Agenda.** Items may be placed on the agenda by the Chairman, the City Manager or designee, or at the request of a Member. The party (or individual) requesting the agenda item will be responsible for preparing an agenda item cover sheet and for the initial presentation at the meeting. Items included on the agenda must be submitted to the Staff Liaison no later than one week before the Board meeting at which the agenda item will be considered. Agenda packets for regular meetings will be provided to the Members in advance of the scheduled Board meeting. Agenda packets will contain the posted agenda, agenda item cover sheets, and written minutes of the last meeting.

**Section 4.3. Special Meetings.** Special meetings may be called by the Chairman or by three (3) Members.

**Section 4.4. Quorum.** A quorum shall consist of a majority of the Members. A quorum is required for the Board to convene a meeting and to conduct business at a meeting.

**Section 4.5. Call to Order.** Board meetings will be called to order by the Chairman or, if absent, by the Vice-Chairman. In the absence of both the Chairman and Vice-



Chairman, the meeting shall be called to order by the Secretary, and a temporary Chairman shall be elected to preside over the meeting.

**Section 4.6. Conduct of Meeting.** Board meetings will be conducted in accordance with these Bylaws and City Council Meeting Rules and Procedures, as applicable to the Board. See *Ordinance Chapter 2.24*.

**Section 4.7. Voting.** Each Member shall vote on all agenda items, except on matters involving a conflict of interest, substantial financial interest or substantial economic interest under state law, the City's Ethics Ordinance, or other applicable Laws, Rules and Policies. In such instances the Member shall make the required disclosures and shall refrain from participating in both the discussion and vote on the matter. The Member may remain at the dais or leave the dais, at the Member's option, while the matter is being considered and voted on by the other Board Members. Unless otherwise provided by law, if a quorum is present, an agenda item must be approved by a majority of the Board Members present at the meeting.

**Section 4.8. Minutes.** A recording or written minutes shall be made of all open sessions of Board meetings. The Staff Liaison is the custodian of all Board records and documents.

**Section 4.9. Attendance.** Members are required to attend Board meetings prepared to discuss the issues on the agenda. A Member shall notify the Chairman and the Staff Liaison if the Member is unable to attend a meeting. Excessive absenteeism will be subject to action under Council policy and may result in the Member being replaced on the Board. See *Ordinance Section 2.36.010D*. Excessive absenteeism means failure to attend at least 75% of regularly scheduled meetings, including Board meetings and Subcommittee meetings. If a Member is removed from the Board that position shall be considered vacant and a new Member shall be appointed to the Board in accordance with Section 2.5 above.

**Section 4.10. Public Participation.** In accordance with City policy, the public is welcome and invited to attend Board meetings and to speak on any item on the agenda. A person wishing to address the Board must sign up to speak in accordance with the policy of the Council concerning participation and general public comment at public meetings. Sign-up sheets will be available and should be submitted to the Chairman prior to the start of the meeting. If any written materials are to be provided to the Board, a copy shall also be provided to the Staff Liaison for inclusion in the minutes of the meeting. Speakers shall be allowed a maximum of three minutes to speak, but may

take up to six minutes if another individual who signs up to speak yields the time to the speaker. If a person wishes to speak on an issue that is not posted on the agenda, they must file a written request with the Staff Liaison no later than one week before the scheduled meeting. The written request must state the specific topic to be addressed and include sufficient information to inform the Board and the public. A person who disrupts the meeting may be asked to leave and be removed.

**Section 4.11. Open Meetings.** Public notice of Board meetings shall be provided in accordance with the provisions of the Texas Open Meetings Act. All Board meetings and deliberations shall be open to the public, except for properly noticed closed session matters, and shall be conducted in accordance with the provisions of the Texas Open Meetings Act.

**Section 4.12. Closed Sessions.** The Board may conduct closed sessions as allowed by law, on properly noticed closed session matters, such as consultation with attorney on legal matters, deliberation regarding the value of real property, competitive utility matters, and economic development negotiations. A recording or certified agenda shall be made of all closed sessions of Board meetings.

## **ARTICLE V. REPORTS TO CITY COUNCIL**

The Board shall meet with City Council, as requested, to determine how the Board may best serve and assist City Council. City Council shall hear reports from the Board at regularly scheduled Council meetings.

## **ARTICLE VI. SUBCOMMITTEES**

**Section 6.1. Formation.** When deemed necessary by a majority of the Board, Subcommittees may be formed for specific projects related to Board matters. Subcommittees comprised of non-Members may only be formed with the prior consent and confirmation of the City Council.

**Section 6.2. Expenditure of Funds.** No Subcommittee, or member of a Subcommittee, has the authority to expend funds or incur an obligation on behalf of the City or the Board. Subcommittee expenses may be reimbursed if authorized and approved by the Board or by City Council.



**Section 6.3. Open Meetings.** Subcommittee meetings and deliberations shall be open to the public, except for properly noticed closed session matters, and shall be conducted in accordance with the provisions of the Texas Open Meetings Act.

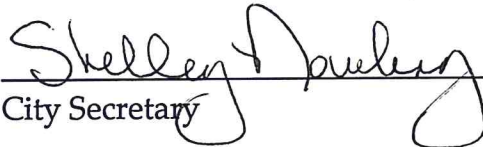
## ARTICLE VII. BYLAW AMENDMENTS


These Bylaws may be amended by majority vote of the Board Members at any regular meeting of the Board. The Board's proposed amendments to the Bylaws must be approved by City Council at the next Council meeting after the Board's approval. Bylaw amendments are not effective until approved by City Council.

Approved and adopted at a meeting of the City Council on the 8 day of December, 2015.

ATTEST:

THE CITY OF GEORGETOWN

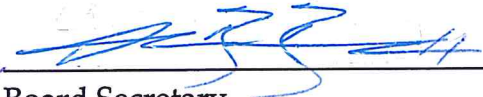
  
City Secretary

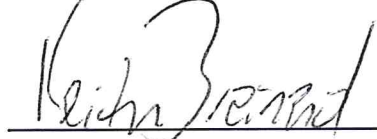
  
Mayor

Approved and adopted at a meeting of the Board on the 25<sup>th</sup> day of February, 2016.

ATTEST:

BOARD

  
Board Secretary

  
Board Chairman

City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Review of the City Council's Boards and Commissions Attendance Policy – Tommy Gonzalez, Board Chair

**ITEM SUMMARY:**

Review of the City Council's Boards and Commissions Attendance Policy – Tommy Gonzalez, Board Chair

**FINANCIAL IMPACT:**

N/A

**SUBMITTED BY:**

Tommy Gonzalez, Board Chair

**ATTACHMENTS:**

Description	Type
 Attendance Policy	Backup Material



#### SEC 2.36.010 DUTIES OF COMMISSION, COMMITTEE & BOARD MEMBERS

Attendance by Members is integral to success of the commission, committee or board. It is Council policy to require a minimum of 75 percent attendance of each Member at each regularly scheduled meeting including subcommittee meetings. A Member shall be allowed two excused absences for the Member's personal medical care, required medical care of a Member's immediate family member (as defined by City Ordinance), or Member's military Service that shall not count against the 75 percent attendance requirement. Written notice shall be sent to a Member and the Member's City Council representative when it appears the Member may violate the attendance policy by being absent from more than 25 percent of regularly scheduled meetings, including subcommittee meetings. Excessive absenteeism may result in the Member being replaced by the Council. If a Member is removed from a committee, commission or board, that position shall be considered vacant and a new Member shall be appointed to the Board in accordance with Section 2.36.040

City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Discuss dates/times for future General Government and Finance Board (GGAF) meetings – Tommy Gonzalez, Board Chair

**ITEM SUMMARY:**

Discuss dates/times for future General Government and Finance Board (GGAF) meetings – Tommy Gonzalez, Board Chair

**FINANCIAL IMPACT:**

N/A

**SUBMITTED BY:**

Tommy Gonzalez, Board Chair



City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Review minutes from the March 6, 2019 General Government and Finance Advisory Board Meeting -  
Amy Janecka, Board Liaison

**ITEM SUMMARY:**

Review minutes from the March 6, 2019 General Government and Finance Advisory Board Meeting


**FINANCIAL IMPACT:**

N/A

**SUBMITTED BY:**

Amy Janecka, Board Liaison

**ATTACHMENTS:**

Description	Type
 March 6, 2019 GGAF minutes	Backup Material

**Minutes of Meeting of the  
GENERAL GOVERNMENT AND FINANCE ADVISORY BOARD (GGAF)  
City of Georgetown, Texas  
March 6, 2019**

The General Government and Finance Advisory Board met on Wednesday, March 6, 2019 at 4:30 PM in the Community Room at City Hall, 808 Martin Luther King Jr Street, Georgetown, Texas.

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**Board Members Present:**

Kevin Pitts  
Chere' Heintzmann, Secretary  
James Bralski  
Stu McLennan

**City Staff Present:**

David Morgan, City Manager  
Leigh Wallace, Finance Director  
Elaine Wilson, Controller  
Christi Rawls, Assistant Controller  
Chris Bryce, IT Director  
James Davis, Operations Manager  
Eric Nuner, Assistant Parks and Recreation Director  
Trish Long, Facilities Superintendent  
Rosemary Ledesma, Purchasing Manager

**Others present:**

Adam McCane with Weaver

**Legislative Regular Agenda**

James Bralski called the meeting to order at 4:30 p.m.

**A Review minutes from the January 23, 2019 General Government and Finance Advisory Board Meeting - Amy Janecka, Board Liaison**

No questions or comments regarding the minutes. Motion to approve the minutes by Kevin Pitts, 2<sup>nd</sup> by Stu McLennan. Approved 4-0

**B Review and discussion of the Comprehensive Annual Financial Report (CAFR) and the independent audit for the fiscal year ended September 30, 2018. - Elaine S. Wilson, Controller**

Elaine Wilson presented on the Comprehensive Annual Financial Report (CAFR) and explained the reporting requirements. Elaine explained how it is used by outside agencies and also reviewed the process they city goes through to build the CAFR report and what information goes into the CAFR. The information on Statement of Net Position and the Statement of Activities were reviewed in more detail. Elaine also let the board know that the audit results were an unmodified opinion.

Adam McCane from Weaver then presented on the CAFR and the auditing side of the process. He went over the timeline and Weaver's auditing process. There was one finding noted which management had informed them of beforehand-bank reconciliations were not fully completed for the fiscal year due to staff turnover and software changes. The needed reconciliations have since been completed and Elaine

helped answer questions about the specific timing of events that affected the initial incompleteness. Adam also reviewed the results of the audit and explained that they issued an unmodified opinion.

No voting needed for this item.

- C Consideration and possible action to recommend approval of a Renewal Agreement with Brandt Company of Austin, Texas through Buyboard contract # 558-18 for heating, ventilation and air conditioning (HVAC) services in the estimated annual amount of \$400,000.00 and to recommend ratification of \$120,000.00 of previous expenditures for similar purchases from the Brandt Company. -Trish Long, Facilities Superintendent, Eric Nuner, Parks & Recreation Assistant Director**

Trish Long presented the information on what this service would include, the costs, and the company's history with the city. Trish explained that Brandt is already familiar with the city's needs.

The board asked if this is a renewal and if a rebid was done. Trish confirmed it is a renewal and explained that they went through the City's Buyboard and did not have to rebid. Stu McLennan asked about the replacement plan for HVAC units and Trish confirmed that less than 50% need to be replaced at this time.

Stu McLennan motioned to approve, 2<sup>nd</sup> by Chere Heintzmann. Approved 4-0

- D Consideration and possible action to approve the annual purchase of replacement desktop computers in the amount of \$178,138.10. James Davis, IT Operations Manager - James Davis, IT Operations Manager**

James Davis explained the replacement needs and that this request is in the city's plan for standard replacement of hardware.

Chere asked if any upgrades were being done and James Davis verified that some units were being upgraded to laptops. Stu McLennan asked about space on the new hardware and James Davis verified it supports what is needed by the city.

Chere Heintzmann motioned to approve, 2<sup>nd</sup> by Stu McLennan. Approved 4-0

- E Consideration and possible action to approve the purchase of additional storage for the City's Exagrid back-up system from LH Computer Services in the amount of \$85,000.00 - Chris Bryce, IT Director and James Davis, IT Operations Manager**

James Davis explained the need for additional storage for the city's backup system at the primary site. He showed a diagram to further explain where the storage space is needed.

Stu McLennan asked if the city is utilizing the cloud for space. James Davis explained that the city is not due to the cost. A cost benefit analysis on utilizing the cloud was briefly discussed.

Chere Heintzmann motioned to approve, 2<sup>nd</sup> by Kevin Pitts. Approved 4-0

Motion to adjourn by Stu McLennan, 2<sup>nd</sup> by Chere Heintzmann. Meeting adjourned at 5:09pm.

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Tommy Gonzalez  
Board Chair

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Date

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Chere' Heintzman  
Board Secretary

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Date

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Amy Janecka  
Board Liaison

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Date

City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Discussion of Workday Project – Leigh Wallace, Finance Director

**ITEM SUMMARY:**

Human Resources, Finance and IT will provide an update on the project activities for the first six months, as well as challenges the team is facing. Staff will describe the current project risk environment and request for additional one-time project resources. This item related to subsequent action items on the agenda.

**FINANCIAL IMPACT:**

N/A

**SUBMITTED BY:**

Leigh Wallace, Finance Director

**ATTACHMENTS:**

Description		Type
	Workday update presentation	Presentation

# Workday Project Update

GGAF

March 27, 2019

# Project Purpose

Address concerns and issues documented in Needs Assessment:

- Current system lacks modern ERP functionality
- No 'true' HR system/module implemented
- Current limitations force use of side systems
- Lack of integration between City systems & ERP modules
- Chart of Accounts does not meet City needs
- Limited access to real-time data
- Lack of training & system access
- Lack of user-friendly / flexible reporting

# Why Workday

## Business Value

- “Business value comes from changes in business performance and improved business outcomes.” – Gartner, Inc. 2016
- Yet, 70% of ERP projects fail to derive value:
  - Must effectively compete with “Best of Breed” movement
  - The system does not meet business expectations and is not fully leveraged
  - Organizations do not achieve consensus on the system
  - ✓ Highly ranked and competitive product in the ERP industry
  - ✓ High user approval
  - ✓ Consensus from diverse stakeholders



# Staff's Project Principles

**workday.**  
**Guiding Principles**

**Modernize and standardize business processes to take advantage of best practices**

**Secure**

**Supply more accurate and up-to-date information to employees and decision makers with a user friendly system to ensure clarity and informed decision making**

**Reliable**

**Improve operational efficiency by eliminating manual processes, redundant data collection, and reliance on stand alone systems**

**Available**

**Transparent**

**Sustainable**

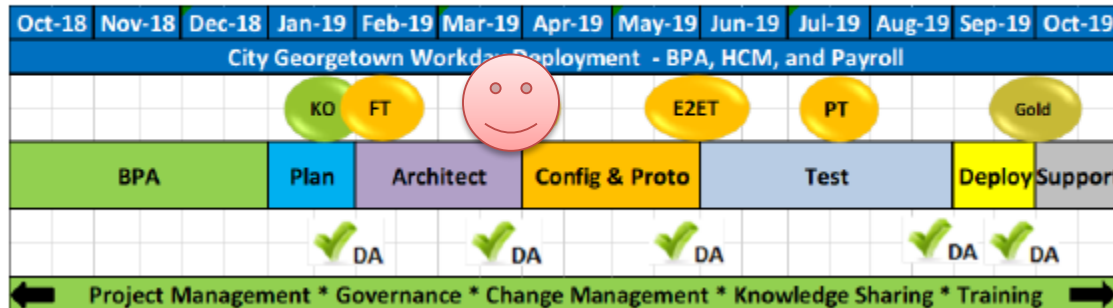
**Maintainable**

**Establish and develop our systems with a vision for the growth of our City in size and complexity  
 Keep it simple - No silos**

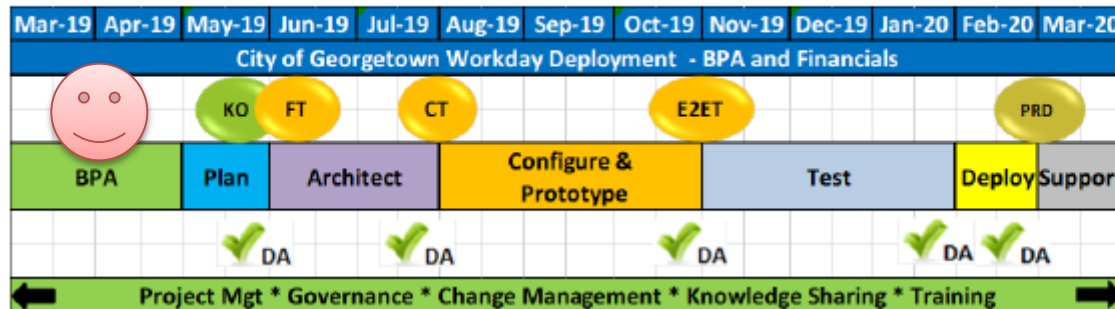
**Sierra-Cedar**

# Project Timeline

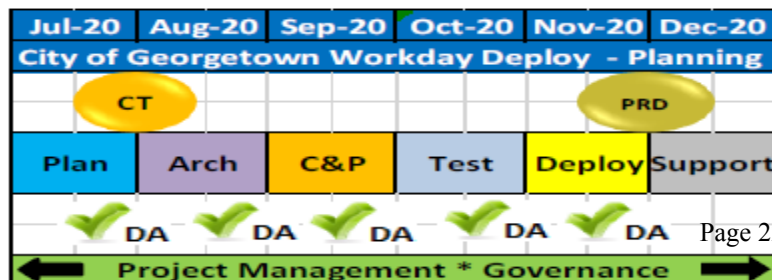
## Phase 1 - HCM/Payroll Deployment Timeline with Business Process Alignment



## Phase 2 - Financials Deployment Timeline with Business Process Alignment



## Phase 3 – Planning Deployment Timeline



# Phase I: HR/Payroll

Modules: Human Capital Management, Payroll, Time Tracking, Recruiting, Talent/Performance, Compensation, Benefits

Completed tasks to date:

- Business Process Alignment
  - 23 sessions
  - 159 alignment opportunities
- Foundation tenant build/Data conversion
  - Supervisory org, active employees, location, pre hires and hires
  - Chart of accounts

# Phase I: HR/Payroll

## Business Process Alignment Opportunity Examples

- Benefit elections from new hire, open enrollment, flows through the system for deductions and elections with carriers.
- Position control
- Employee self-service:
  - Open enrollment for benefits
  - Direct deposit elections
  - Emergency contact information

# Challenges

## ERP Project Experience

- While City has experience with other large software projects, staff lack ERP specific experience with testing

## Project/Staffing Resources

- 3 Business Analyst positions and 1 Project Manager fully allocated
- ~12 HR, Finance, and IT project members spend 80% of their time on the project
- Turnover in HR and Accounting



Example

Pre-project







Example

During project  
Phase I  
HR/Payroll



# Human Resources Phase I

- Director – directs all HR activities
  - Benefits Coord – open enrollment, wellness and retirement coordination
  - HR Generalist Lead – risk management, civil service coord, training and development
  - HR Specialist – workers comp, customer service
- ~~Asst Director – manages daily operations~~
  - ~~– HR Specialist – recruitment, customer service, benefits~~
  - ~~– HR Generalist – compensation, performance management, recruitment~~
  - ~~– Business Systems Analyst – HR functional lead and project training lead~~



# Accounting Phase I

- ~~Controller – manages department~~
- ~~Asst Controller – directs year end audit and monthly financial reporting~~
  - 4 Accountants – journal entries, fixed assets, grant compliance
- ~~AP/Payroll Supervisor – manages cash, conducts wires, supervises team~~
  - ~~Payroll Specialist – processes payroll~~
  - 3 Accounting Specialists – process accounts payable, accounts receivable, conduct reconciliations

# Actions Taken

Going into Phase II Financials:

- Cross training multiple areas to keep business continuity
- Feedback to Sierra Cedar about efficient scheduling and organization of on-site meetings
- Re-allocate existing budget for risk mitigation and vacant positions to allow hiring of backfill temps in HR, Accounting, Purchasing and Budget
- Use existing project contingency for short-term project staff augmentation contracts for testing and financials

# Resource Request

## Additional One-time Implementation Resources:

- Testing Lead – manage and conduct all testing services for Phase I and Phase II
- Project Lead – assist the Controller with all aspects of Phase II
- Enterprise Architect – replace vacant Finance Business Analyst with experienced contractor who can assist with testing, data conversion, project management, business process alignment, and integrations through Phase III

# Expected Benefits

- Higher level expertise → less time ramping up, more time getting tasks complete
- More temp help at the office → reduce City and project staff burnout
- More temp help on the project → stay on schedule and avoid cost overruns for delays

# Expense

<b>Additional Resource Needs</b>	<b>FY2019</b>	<b>FY2020</b>	<b>Total</b>
Backfill Temps HR	25,000	20,000	45,000
Backfill Temps Finance	73,000	25,000	98,000
Staff Aug - Testing Lead	86,400	129,600	216,000
Staff Aug - Project Lead 2	73,213	125,507	198,720
Staff Aug - Enterprise Architect 2	110,720	304,480	415,200
<b>Total</b>	<b>368,333</b>	<b>604,587</b>	<b>972,920</b>

# Sources of Funds

Green – reallocation of existing funds

Blue – new request for 2020

Potential Sources	FY2019	FY2020	Total
Available project contingency	63,318	0	63,318
Vacancy Savings Fin Admin	38,000	76,000	114,000
Risk funding in Fin Admin	72,000	75,000	147,000
IT Fund excess balance	100,000	-	100,000
Additional CO debt	-	500,000	500,000
Vacancy Savings BIP	100,000	-	100,000
<b>Total</b>	<b>373,318</b>	<b>651,000</b>	<b>1,024,318</b>

# Alternatives

- Hire less experienced staff → may take longer to complete project
- Reduce overlapping phases → increase project costs
- Pull resources from other places in the City → delay other work

# Summary

- Project is on schedule
- Phase I business process review demonstrates transformative value
- Both project staff and back office staff struggle with adequate time resources
- Following action items to approve staff augmentation contracts
  - FY2019 use project contingency and reallocation of existing budget through end of fiscal year
  - FY2020 reallocate committed resources and new budget request



# Reference Slides

# Contract Risk Mitigation

- Schedule and resource risk
  - Phased implementation to spread workload
  - Third party project management for expert coordination
  - 3 full-time system analysts hired to support project and ongoing system
- Data migration and system integration risk
  - Sub-contract assistance with data ETL for better coordination
  - Refined scope of data migration and system integrations

# Contract Risk Mitigation

- Financial Risk / Project Success
  - Fixed fee services and milestone payments
  - 15% retainage held to Go Live for phases 1 and 2
  - Cap on time and expense services without additional planning and approval
  - Ability to opt out of 7 year subscription term after year 3
  - Price locks for additional subscription terms
  - Price discount for early adoption of budget module
  - Added two months of post-go live support
  - Added Gold Level customer support

# Ten Year TCO

- Ten Year Total Cost of Ownership
  - Final Contracts: \$9.7 million
- IT Fund Budget for Annual Subscription and Service
  - Total \$501,000
- Capital Projects Budget for One-time costs
  - Total \$5.2M
    - Implementation consultant, data conversion, project management, delivery assurance, project training, travel

City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Discussion and possible recommendation to approve an ERP Project Manager/Testing Lead to assist with the Workday implementation utilizing the Texas Department of Information Resources (DIR) Information Technology Staff Augmentation Contract (ITSAC) with GTS Technology Solutions in the amount of \$216,000. --Leigh Wallace, Finance Director

**ITEM SUMMARY:**

The Workday project team is now 6 months into the 24 month implementation project. During Phase I HR/Payroll, the City's third-party project manager assessed the skills of all project team members. The project manager notified the Executive Steering Committee that a major gap in team skills was someone to lead testing for all phases. The team is requesting this additional one-time implementation resource to write test scripts, teach City staff how to test, oversee testing, and analyze results to provide input on readiness for go-live.

The City of Georgetown, following the Texas Department of Information Resources Best Value IT Staff Services Process has identified an Enterprise Resource Planning (ERP) Project Manager/Testing Lead that meets the needs of the City and has expert level Workday testing experience and support for testing implementations of the Workday system. The staffing services will be utilized for a 10-month engagement.

Candidate resumes for the ERP Project Manager/Testing Lead role were submitted from GTS that has a contract with DIR. After reviewing the applications received and reference checks, interviews were scheduled with team members from HR, Finance and IT. Two of the candidates backed out before they could be interviewed because they accepted other job offers. After the interview was performed, the selection team met to discuss the candidate. After discussion the team agreed this candidate's extensive Workday testing experience is an excellent fit.

The staffing services will be procured through GTS Technology Solutions utilizing Texas DIR contract DIR-TSO-3504.

**FINANCIAL IMPACT:**

Total cost of the staffing services for 10 months is estimated at \$216,000. This estimate is provided based on a maximum 1728 hours. Actual working time will exclude city holidays. Hours worked will be reported and monitored on a weekly basis and approved by the City's Assistant IT Director before they can be billed.

Funding is available through the remainder of Fiscal Year 2019 (May – Sept) by reallocating existing resources such as project contingency, vacancy savings in Finance, and excess IT fund balance. Funding in FY2020 for the remainder of the contract is dependent upon Council approval of a budget request to issue additional CO debt for these one-time implementation costs.

**SUBMITTED BY:**

Leigh Wallace, Finance Director

## **ATTACHMENTS:**

	<b>Description</b>	<b>Type</b>
	Michelle Smith Resume	Backup Material
	Quote	Backup Material
	DIR Contract	Backup Material



PRESENTED BY: JENNY KERTSOS

## MICHELLE SMITH

### **PROFESSIONAL SUMMARY:**

Strong leadership and communication skills. Able to handle multiple projects; detail oriented and deadline driven. Exceptional Test and Project Management skills. Strong verbal and written communication skills. Track record of on-time, on-budget, delivery of projects. Comes highly recommended. Experience developing Test Plans, Test Schedules, Project Plans, Project Leadership, Talent and Recruitment Management. Issues/Action Items and Project Metrics. Expertise with a variety of Human Resource Management, ERP and Payroll Strategies. Areas of specialization include:

- Employee populations exceeding 100,000
- Project Management
- Test Management
- Systems Implementation Management
- Integrations- Payroll, EIB, Web Service
- Weekly, Bi-weekly, Salaried, Commissions, Stock and Union payrolls Payroll Journal Entries and Reconciliations G/L and Bank Reconciliations, Financial Reporting, Month-end close, and Budgeting
- Payroll Tax, Sales and Use, Property Taxes, Quarterly and Yearend Tax Filings and Reporting
- Payroll Systems Conversions and Implementations, SOW Development Human Resource Management Analysis and compliance reviews
- Design and Requirement Document Writing
- Policies and Procedures

### **TECHNICAL SKILLS:**

Tools:	HP Quality Center ALM SDLC tool set, Microsoft Project 2007, PowerPoint, Visio, SharePoint. Unix, SQL Multiple Systems: Workday 24, 26, 27 (EIB, Studio/Connector, PeopleSoft, ADP, PCPW, Enterprise, Payforce, Lawson, Workforce, SAP, Ceridian, PayXpert, Oracle, Ultipro, Great Plains, JD Edwards, People Tools.
Time/Attendance:	Kronos, Peoplesoft Time & Labor, ADP Vantage, Payforce, Enterprise, EZ Labor, ETime Multiple Reporting Systems: Access, Reportsmith, Salesforce, Crystal Reports, Discovery, Toad, HP Quality Center
General Ledger Reporting/Reconciliations:	Peoplesoft, Lawson, Ultipro, SAP, Oracle, Access, JD Edwards, Workday Financials



PRESENTED BY: JENNY KERTSOS

## MICHELLE SMITH

### PROFESSIONAL EXPERIENCE:

#### Consultant

2006 - Present

#### ERCOT Council of Texas – Austin, TX

04/2016 - Present

##### Workday Testing Manager

- Managing project testing activities for Workday (HCM/FIN/KAINOS smart) system implementation for project timelines, resources. Weekly status reporting to Steering Committee. Managing the client's Workday testing team and business testers. ESS and MSS.
- Created HCM and FIN business requirements test matrix.
- Core HCM/Payroll; Payroll Interfaces.
- IT Testing and Test management processes and procedures
- Writing Testing Strategy and Test Plan for Functional, End to End, UAT, Payroll Parallel, Gold Validation and Cutover activities, Staff Training and Test Management Processes and Procedures.
- EIB, Core Connectors, Configuration, Data Conversion
- Systems/interfaces for inbound and outbound.
- Data Conversion from the current ADP, Peoplesoft systems to Workday.
- Partnered with client's system implementer Engagement Manager, coordinated across all business areas to oversee the effort of integrations, UAT, Parallel Payroll and Gold Validation and Cutover Testing. Accountable for the tracking of all defects, resolution, and escalation of risks identified during testing in Quality Center and Kainos testing tool. Generating reports for daily statuses and reporting to Steering Committee.
- Signing off on all test plans and test report and directing the activities of testers on a day-to-day basis based on the project plan and required tasks
- Quality Assurance Test Data Management, Quality Center, SharePoint 2013. Operation Readiness planning, training and execution prior to Go-LIVE

#### Campbell Soup - Camden, NJ

01/2015 – 02/2016

##### Workday Test Manager

- Managing a team of 15 on Peoplesoft 9.1 HCM/Financials to Workday 24 for 14,000 employees
- Project Plans, Managing Budget and Resources and Timelines.
- Domestic and International.
- Payroll Compensation, HCM, Recruiting, Talent, HR Benefits
- Configuration, Integrations, Data Analysis and Mapping.
- Time and Labor, Payroll Parallel Testing-Test Plans, Test Cases, Cutover
- Operational Readiness Training
- Defect Management-Troubleshooting, Resolution-ALM (HP) Quality Center
- Ad-Hoc Reporting





**PRESENTED BY: JENNY KERTSOS**

## **MICHELLE SMITH**

**T-Mobile - Seattle, WA**  
**Project Lead**

**07/2014 – 01/2015**

- Project Lead on Implementation from Peoplesoft 8.9 to Peoplesoft 9.2 HCM and Financials
- System Design Documents, Integrations
- Kronos In Touch Time Configuration
- Test Strategy, Test Cases
- End User Training, Reporting

**Tribune Publishing – Dallas, TX**  
**Workday Payroll Lead Consultant**

**04/2014 –07/2014**

- Project Lead for team of 10 from ADP Payforce to Workday Implementation for 20,000 employees
- Payroll, HCM, HR Benefits
- Onshore and Offshore
- System Design, Configurations, Integrations
- Payroll Parallel Testing, End User Training
- Custom Reports, System Security

**T-Mobile - Seattle, WA**  
**Project Manager**

**09/2013 – 04/2014**

- Kronos v6.3 for WTK, WFF, WFS, and Analytics for 7000 employees.
- All aspects of the project for Payroll/ Time and Attendance
- System Analysis, Requirements Gathering and Configuration
- Writing Functional Design Documents and Blueprints
- In Touch Time Configuration
- Parallel Testing
- End User Training
- Establishing Payroll and Timekeeping Processes internally
- Reporting
- System Security

**AT&T - Richardson, TX**  
**SR. Business Analyst**

**08/2012 – 08/2013**

- Sr. Business Analyst for Implementation for 140,000 employees, Peoplesoft 9.2 HCM/Financials, Kronos v6.2
- Employee Setup



**PRESENTED BY: JENNY KERTSOS**

## **MICHELLE SMITH**

- Writing Systems Requirements, Desktop Procedures
- Test Plans, Unix Updates, Connect Enterprise, Analytics, Configuration, Test Scripts
- Writing Business Requirements
- Testing of Processes, System Parallels, End User Training
- Project Reporting, Daily Status, Forecasting
- HP Performance Quality Center, Sharepoint, Reqpro

### **Rowan Oil & Gas – Houston, TX Project Implementation Lead**

**01/2012 – 08/2012**

- Lead SAP Core HR/Payroll Implementation for Payroll ADP Payforce Compensation HR. Benefits, for 3,000 employees.
- Month End, GL Reconciliation
- Configuration End user training.
- Documentation of processes and procedures.
- Crystal Reporting & Dashboard Design, Comparison and Analysis, Forecasting

### **Direct General Insurance - Nashville, TN Project Lead**

**07/2011 – 12/2011**

- Managing Peoplesoft Payroll Dept. of 10 Payroll Specialists for 7500 employees
- Tax Filing. G/L Reconciliation, Administrative Unix Support. Project Lead on HR/Payroll Kenexa Onboarding
- System Security, Training, Reporting, CATS Time and Attendance, Policies and Procedures

### **MetroPCS - Dallas, TX Project Manager**

**07/2010 – 07/2011**

- Project Lead for Implementation from Ultipro to Workday v14
- Implementation from TimeCentre to Kronos 6.1 time and attendance, Scheduling
- Gap Analysis, Configuration, System Requirements, Test Plans and Test Scripts
- Tax Filing, G/L Reconciliations. Policies and Procedures, Reporting.
- End User Training, Administer Unix Support, Administration, System Security.

### **Celanese Chemicals - Dallas, TX Project Manager**

**09/2009 – 06/2010**

- Payroll Project Manager on SAP Project for international payrolls, CATS, reconciling and filing multiple year tax issues for payroll utilizing PeopleSoft. Implementation of tax filing from in-house to PeopleSoft 9.0.
- Brink's Home Security – July 2009- September 2009 Dallas, TX



PRESENTED BY: JENNY KERTSOS

## MICHELLE SMITH

- Project Manager on Reconciliation Project, reconciling multiple year tax issues; payroll, sales and use tax.
- Developed policies and procedures for payroll tax reconciliation in PeopleSoft 8.9 and desktop Procedures for payroll processing utilizing ADP, PeopleSoft 8.9 and Reportsmith for Reporting.

### **Medical Edge Health Care - Dallas, TX Kronos Functional Lead**

**06/2009 – 07/2009**

- Managed payroll implementation from ADP to Lawson 9.0
- Kronos Timekeeper 6.0 implementation, JD Edwards Financials
- Payroll and General ledger implementation, training and interfacing with Hospital users.

### **ADDITIONAL WORK EXPERIENCE:**

Crump Insurance - Dallas, TX  
Project Manager

10/2008 - 06/2009

Idearc Media - Dallas, TX  
Payroll/Tax Project Manager

04/2008 - 09/2008

Bowne - Dallas, TX  
Payroll Project Manager

02/2006 - 02/2008

Adams Mark Hotel – Dallas, TX  
Payroll Project Manager

10/1999 - 02/2006

Boeing Aircraft – Shreveport, LA  
Payroll Manager

04/1994 – 08/1999

WFI, Inc. – Houston, TX  
Payroll Manager/Accounting Manager

12/1992 – 03/1994

### **EDUCATION:**

Texas School of Business, Houston, Texas, Business Accounting  
Houston Community College, Houston Texas-Business Administration



TECHNOLOGY SOLUTIONS

9211 Waterford Centre Blvd, Suite 125  
Austin, TX 78758

3/20/2019  
Greg Berglund

**GTS DIR#-TSO-3504**

Re: Quote for Michelle Smith  
Project Manager 2 Emerging (Testing Lead)  
\$125.00 per hour  
1728 hours  
Total.....\$216,000.00

Thank you,

**JENNY KERTSOS**

*Account Executive, Staffing*

---

**P** 540.847.2996   **F** 512.452.0691  
jenny.kertsos@gts-ts.com



## Scope of Services

Pursuant to the DIR-TSO-3504, GTS shall provide Michelle Smith as Project Manager 2 Emerging at the rate and rank as provided above for City of Georgetown's implementation of the Workday ERP System (the "Project"). The Project Manager will be the project lead/manager for testing and will be on-site at the City for 10 months. Michelle Smith, or any candidate provided as a replacement pursuant to the terms of DIR-TSO-3504, must have the following skills and perform the following services:

With testing experience and expertise, the Project Manager for Testing must be able to develop test plans, manage deadlines, scope deliverables, provide updates, and have a proven track record of coming in on time and under budget. The Project Manager for Testing will lead the Workday testing process and create an end-to-end test plan, executing the plan and managing all activities in the plan to ensure that all objectives are met and that the solution works as expected.

- Partner with Project Leadership team, and Implementation Partner Experts to define Test Strategy, key testing phases and execution approach.
- Develop detailed test plans in terms of functionality, performance, reliability, stability and compatibility with other legacy- and/or external systems
- Evaluates, recommends, and implements automated test tools and strategies
- Design testing processes that would support training objectives; coordinate closely with training teams to get UAT participants ready for test execution
- Work with subject matter experts to create clear consolidated test plan based on individual workstream plans (System, Configuration, E2E, Regression and UA testing)
- Guide Project SMEs on how to build effective, efficient and repeatable test cases to streamline testing processes
- Provide guidance on how to record clear testing results, investigate testing issues, and how the team should provide feedback on root failure cause and potential remediation activities
- Define, create and roll out process and tools to capture execution sequencing, test scenarios, test data requirements, expected results for functional and integration tests (to and from Workday with various internal and external applications)
- Expert knowledge of developing, maintaining, and upgrading test scripts
- Also writes, implements, and reports status for system test cases for testing
- Analyzes test cases and provides regular progress reports
- Participates in the testing process through testing, test review and analysis, test witnessing and certification of software
- Experience leading the testing process through test review and analysis
- Provide a "trusted expert advisor" role as a Subject Matter Expert for technical services, to both internal and external customers, ranging from formal advice to internal and external customer presentations
- Institute standard, metric-based test and defect status reporting
- Ability to manage projects and drive to completion
- Excellent verbal and written skills

The Project Manager will represent the interest of the City of Georgetown and be responsible for working with the implementation team.

Vendor Contract No. \_\_\_\_\_

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES**

**ARC GOVERNMENT SOLUTIONS, INC.**

1. DIR acknowledges the name change of this contract to ARC Government Solutions, Inc. from Austin Ribbon & Computer Supplies, Inc., effective as of the last date of signature; DIR shall change the contract documents hereafter to ARC Government Solutions, Inc.
2. ARC Government Solutions, Inc. hereby represents to DIR that it owns the Contract and agrees to perform all duties and obligations to be performed by Vendor. ARC Government Solutions, Inc. hereby represents to DIR that by the effective date of this Contract that it is registered as a Texas Vendor, with all necessary Texas taxpayer identification numbers with the Comptroller of Public Accounts and be in good standing with that office, and otherwise be authorized to do business with the State of Texas.

**3. Introduction**

**A. Parties**

This Contract for Services ("Contract") is entered into between the State of Texas ("State"), acting by and through the Department of Information Resources ("DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and ARC Government Solutions, Inc. ("Vendor"), with its principal place of business at 9211 Waterford Centre Blvd., Ste. 202, Austin, TX 78758.

**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-242, on March 29, 2016, for Information Technology Staffing Augmentation Contracts. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-242 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Information Technology Staff Augmentation Contracts (ITSAC); Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Services and Pricing Index; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-242, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-242, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1 and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

Vendor Contract No. \_\_\_\_\_

**4. 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, DIR may extend this Contract, by amendment, for up to two (2) optional one-year terms. If there are no sales at the end of the initial term, this Contract will not be extended. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional renewal terms.

**5. Service Offerings**

Services available under this contract are limited to information technology staff augmentation services as specified in Appendix C, Services and Pricing Index.

**6. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

**7. 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 one percent (1.00 %). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000.00 shall be \$1,000.00.

**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 by Vendor in the price to the Customer.

**8. Notification**

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

If sent to the State:

Shannon Kelley, CTPM, CTCM  
Manager, Enterprise Contract Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 463-7666  
Facsimile: (512) 475-4759  
Email: [Shannon.Kelley@dir.texas.gov](mailto:Shannon.Kelley@dir.texas.gov)

If sent to the Vendor:

Ryan Grant  
Austin Ribbon and Computer Supplies, Inc.  
9211 Waterford Centre Blvd., Ste. 202  
Austin, TX 78758  
Phone: (512) 452-0651  
Facsimile: (512) 452-0691  
Email: [ryan.grant@arc-is.com](mailto:ryan.grant@arc-is.com)



Vendor Contract No. \_\_\_\_\_

**9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Information Technology Staff Augmentation Services (ITSAC).**

No exceptions have been agreed to by DIR and Vendor.

Remainder of page intentionally left blank

Vendor Contract No. \_\_\_\_\_

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

**ARC GOVERNMENT SOLUTIONS, INC.**

**Authorized By:** signature on file

**Name:** Ryan Grant

**Title:** President

**Date:** 7/21/2016

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

**Authorized By:** signature on file

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 7/28/2016

**Office of General Counsel:** DB 7/28/2016

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR  
INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES (ITSAC)**

**GTS TECHNOLOGY SOLUTIONS, INC.**

**formerly**

**ARC GOVERNMENT SOLUTIONS, INC.**

1. DIR acknowledges the name change to GTS Technology Solutions, Inc. from ARC Government Solutions, Inc. with its principal place of business at 9211 Waterford Centre Blvd, Suite 202, Austin, TX 78758. Effective date of change is September 26, 2016. DIR agrees to change all contract files to the new name.
2. GTS Technology Solutions, Inc. hereby agrees to perform all duties and obligations to be performed by Vendor under Contract DIR-TSO-3504 to the same extent as if it had been an original party thereto.
3. GTS Technology Solutions, Inc. also represents that 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 §231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate.
4. GTS Technology Solutions, Inc. hereby represents it is authorized to do business in the State of Texas and is in good standing with the Comptroller of Public Accounts.

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

Remainder of page intentionally left blank

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

**GTS TECHNOLOGY SOLUTIONS, INC.**

**Authorized By:** signature on file

**Name:** Ryan Grant

**Title:** President

**Date:** 10/21/2016

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

**Authorized By:** signature on file

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 10/27/2016

**Office of General Counsel:** DB 10/25/2016

**Amendment Number 2**  
**to**  
**Contract Number DIR-TSO-3504**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**GTS Technology Solutions, Inc.**

This Amendment Number 2 to Contract Number DIR-TSO-3504 ("Contract") is between the Department of Information Resources ("DIR") and GTS Technology Solutions, Inc. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. Contract, Section 2. Term of Contract, is amended by the addition of the following:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through July 28, 2019, or until terminated pursuant to the termination clauses contained in the Contract. The contract will renew automatically in one-year increments for one (1) additional year under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. Contract, Section 6. Notification is hereby amended as follows: All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:  
Kelly A. 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

3. Appendix A. Standard Terms and Conditions For Product and Related Services Contracts dated 03/22/2016, is here by restated in its entirety and replaced with the attached Appendix A. Standard Terms and Conditions For Information Technology Staffing Augmentation Contracts (ITSAC) dated 09/29/2017.

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

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 7/28/2018.

**GTS Technology Solutions, Inc.**

**Authorized By:** Signature on File

**Name:** Ryan Grant

**Title:** President

**Date:** 7/10/2018

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

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 7/16/2018

**Office of General Counsel:** DB 7/11/2018

**Appendix A Standard Terms and Conditions for  
INFORMATION TECHNOLOGY STAFF AUGMENTATION CONTRACT  
(ITSAC)**

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INFORMATION TECHNOLOGY STAFF AUGMENTATION CONTRACT  
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**Appendix A Standard Terms and Conditions for  
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**Appendix A Standard Terms and Conditions for  
INFORMATION TECHNOLOGY STAFF AUGMENTATION CONTRACT  
(ITSAC)**

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**1. No Quantity Guarantees**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The Contract is not exclusive to the Vendor. Customers may obtain 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 services will be procured through the Contract.

**2. 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, 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.

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- 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. 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. 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).
- G. State** – refers to the State of Texas.
- H. DIR** – refers to the Department of Information Resources.
- I. Acceptable Candidate** – refers to a candidate that meets the stated requirements pursuant to a Work Order Solicitation and is correctly identified and priced using the ITSAC Category Pricing as defined in Exhibit B.
- J. Active Vendor** – refers to Vendors that are given access to opportunities presented through Work Order Solicitations.
- K. Best Value Selection** – refers to Work Order Solicitation selections made by Customers that do not follow the competitive posting and review process. The Customer informs DIR of the intent to select a Worker and submits the appropriate procurement documentation required for the selection. Customer will determine the criteria for Best Value Selection and whether or not to use this procurement.
- L. Evaluation Period** – refers to the three-calendar month period that coincides with the State fiscal calendar. The evaluation periods are September 1, to November 30; December 1 through February 28; March 1 to May 31 and June 1 through August 31st.
- M. Evaluation Status** – refers to the evaluation that is provided quarterly. It is one of two values: Acceptable or Unacceptable. Vendor shall be evaluated on its performance relative to the performance of other Vendors in the same grouping.
- N. Hourly Rate** – refers to the rate that is charged by the Vendor and paid by the Customer for services rendered by Worker(s) under this contract. It is calculated and communicated in terms of dollars per hour.
- O. Interviewed Candidate** – refers to an Acceptable Candidate that was interviewed by the Customer pursuant to a Work Order Solicitation.
- P. Invoice** – refers to a Customer approved instrument submitted by Vendor for payment of services.
- Q. ITSAC** – refers to the IT Staff Augmentation Contract document executed between DIR and Vendor.
- R. Not to Exceed (NTE)** – refers to the maximum hourly rate for which a Vendor has agreed to provide Worker(s). By this contract, Vendor can provide Worker(s) at a lower hourly rate, but not a higher hourly rate.
- S. Opportunity Response Time** – refers to the time within which a Vendor is expected to respond to a Work Order Solicitation with the appropriate resume(s). The metric used for expected opportunity response time is as established by the Customer.
- T. Placed Candidate** – refers to an Interviewed Candidate that was selected by the Customer pursuant to a Work Order Solicitation.
- U. Purchase Order** – refers to 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).

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- V. Rate Schedule** – refers to the set of competitive, market driven, standardized rates that will document the NTE hourly rates for ITSAC Workers.
- W. TPASS** – refers to the Texas Procurement and Support Services Division of the Comptroller of Public Accounts (CPA).
- X. Vendor** – refers to awarded Information Technology Staff Augmentation Contract (ITSAC) Vendor.
- Y. Worker(s)** – refers to identified individual(s) who perform authorized services under the supervision of Vendor for DIR Customers and who are employees and/or subcontractors of the Vendor.
- Z. Work Order Solicitation** – refers to a document submitted to Vendor by DIR outlining the description of services to be performed for a specified DIR Customer. Work Order Solicitation will include: Number of Workers, Worker skills and qualifications required by the DIR Customer, the number of hours to be worked, duration of engagement with the DIR Customer, authorized travel, and other relevant information. The term also includes Best Value Selections made by Customers, in which the Customer defines Best Value Selection and informs DIR of the intent to select a Worker and submits the appropriate procurement documentation required for the selection.

### **3. 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 Vendor 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 Vendor.

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

- 1)** To the extent any term or condition in the Contract conflicts with the applicable Texas

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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 do not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

**2)** If one or more term or condition 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 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 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 two 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,

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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.

**4. 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.



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**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

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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.

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**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.

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**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.

**5. Terms and Conditions Applicable to State Agency Purchases Only**

**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 of Texas 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 thirty (30) 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 of Texas 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 5.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

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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 5.B.

**6. 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 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 services available under the Contract shall be processed through the Contract.

**B. Internet Access to Contract and Pricing Information**

**1) Vendor Webpage**

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

- a) the services awarded and services description;
- b) contact information (name, telephone number and email address) for Vendor;
- c) instructions for obtaining quotes and placing Purchase Orders;
- d) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- e) a link to the DIR "Cooperative Contracts" webpage for ITSAC Contracts; and
- f) 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

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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 website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

**4) Webpage Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to 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 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.

**C. Services Warranty and Return Policies**

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

**D. DIR Logo**

Vendor 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 Vendor logo, (iii) the DIR logo is only used to communicate the availability of services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

**E. Vendor Logo**

If DIR receives the Vendor's prior written approval, DIR may use the Vendor's name and logo in the promotion of the Contract to communicate the availability of services under the

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Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor'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 trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

**F. Trade Show Participation**

At DIR's discretion, Vendor 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 expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor 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 booth.

**G. Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Vendor will be required to attend an orientation meeting to discuss the content and procedures of the Contract to included 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 for attendance at the meeting.

**H. 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.

**I. 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 service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services.

**7. Purchase Orders, Invoices, and Payments**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A-E.**

**A. Purchase Orders**

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

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**B. Invoices**

Invoices shall be submitted by the Vendor directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to the Vendor.

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 services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

The administrative fee specified in Section 5.A., DIR Administrative Fee, of the contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**C. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) 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.

**D. Tax-Exempt**

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

**E. Travel Expense Reimbursement**

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



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**8. Contract Administration**

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

**A. Contract Administrators**

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators 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) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of pricing and 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 Vendor and a Customer, and iii) advising DIR of Vendor's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager the assigned Contract Manager is not, in the 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 services purchased under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

**b)** DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books. 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 (15<sup>th</sup>) calendar day of the month following the month of the sale. If the 15<sup>th</sup> calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, 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

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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.

If Vendor submits three (3) monthly sales reports or cost recovery fee payments late within a 12-month period beginning upon execution of this Contract, DIR reserves the right to suspend or terminate this Contract for cause per Section 10.B.4.a. of Appendix A, Termination for Cause. If Vendor is late with its monthly sales report, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly report is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly sales reports. If Vendor is late with its monthly administrative fee payment, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly administrative fee payment is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly administrative fee payments. DIR does not waive any other contractual remedy pursuant to this Contract.

**3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor shall electronically provide each Customer with their 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

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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 administrative 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 at DIR's expense.

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

**C. Records and Audit**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH 1).**

**1)** Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, 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 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 and the requirement to cooperate is included in any subcontract 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 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: Customer name, invoice date, invoice number, description, quantity, 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

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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) 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 Vendor 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**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

**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.

**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.

**9. 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 SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR 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

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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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) 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. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES

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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, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS 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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.**

**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)*

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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) 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;
- (xii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiv) under Section 2155.006 and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvi) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xvii) 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.

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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, 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 Fulfillers 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 Organization 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.



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**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 Certification Statement of Exhibit A of the RFO and/or Section 9.C. (xii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

**H. Confidentiality**

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

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

Vendor and/or Order Fulfiller may, from time to time during the performance of the 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 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 shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

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

Prior to commencement of any services, background and/or criminal history investigation of the Vendor'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 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.

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**K. Limitation of Liability**

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

**L. Overcharges**

**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

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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 \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. 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 PER ACCIDENT, \$1,000,000 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;
- 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 of Texas 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 of Texas 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

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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 Managed Services Products and/or Services**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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

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

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

**W. Vendor Reporting Responsibilities**

**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 83<sup>rd</sup> Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

**10. Contract Enforcement**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 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.

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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 §20.1115) 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 services, they are obligated to pay for the services or they may 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

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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 19.A, Notices, of intent to terminate.

**3) Termination for Convenience**

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

**4) Termination for Cause**

**a) Contract**

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

**b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. 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 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



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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 Vendor 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 Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

**11. Statement of Services to Be Performed**

- A.** Vendor shall provide Worker(s) to DIR Customers to perform services that are defined in the Work Order Solicitation, in accordance with the terms and conditions of the Contract. Workers provided by Vendor shall possess qualifications that meet or exceed those specified in the Work Order Solicitation and will perform the functions as outlined in the Work Order Solicitation at the rates quoted therein. All travel is subject to the prior, written approval of the Customer.
- B.** Vendor understands that this is a non-exclusive, indefinite quantity contract. DIR makes no representations or warranties that Vendor shall receive any number or volume of Work Order Solicitations hereunder.

**12. Work Order Solicitation / Purchase Order Issuance**

- A.** In order to be awarded a Purchase Order hereunder, except for Best Value Selection, Vendors will respond to Work Order Solicitation(s) for services as issued by DIR on behalf of its



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Customers, consistent with the Terms and Conditions of this Contract. Vendor understands that no work under any Purchase Order issued by Customer shall commence until receipt of Purchase Order. Vendor will perform in accordance with the terms and conditions of the Customer Purchase Order.

- B.** Customer specifications may include pre-selection requirements that potential Vendors (and their Worker) submit to and satisfy criminal background checks as authorized by Texas law.
- C.** Vendors cannot submit resumes outside of the process for competitive solicitations. (except when customer is using best value).
- D.** Vendor shall direct all communications concerning this Contract and any Work Order Solicitation(s) to DIR except for Customer initiated communications, the interview, the hiring process and Best Value Selections.
- E.** Vendor is prohibited from submitting a substitute candidate during the interview process if the original candidate is no longer available. Vendor may offer a replacement candidate, if the Purchase Order (PO) has been issued and the original candidate is no longer available.
- F.** Duplicate submissions of a candidate will be disqualified, if one or more Vendors submit the same candidate for the same competitive solicitation.
- G.** Together with each resume submitted, Vendor must submit a Right to Represent, signed by the proposed Worker, authorizing the Vendor to submit Worker's resume for that Work Order Solicitation. If Multiple Vendor's submit resumes and a Right to Represent for the same Worker for a given Work Order Solicitation, then that worker will be disqualified from consideration for the Work Order Solicitation.
- H.** DIR will not promulgate a standard candidate resume format/layout. Awarded Vendor may submit candidate resumes in desired company format/layout. DIR will require Vendor to submit the approve DIR cover sheet with the candidate resume.
- I.** Best Value Selections. Customer shall select the candidate and provide DIR with the appropriate procurement documentation to support the selection.

**13. Hourly Rates**

- A.** The Vendor shall quote hourly bill rates to DIR in response to Work Order Solicitation(s) provided by DIR on behalf of its Customer during the term of this Contract. Hourly bill rates shall not exceed awarded NTE bill rates in this Contract. Hourly rates quoted in a particular Purchase Order shall remain valid for a period of time specified in the Purchase Order. Vendor shall not increase its rates under any Purchase Order, including amendments/Purchase Order Change Notice (POCN) thereto, without the express prior written approval of Customer. In the event, that the Vendor submits an hourly bill rate that exceeds the NTE bill rate in the contract, the candidate will be submitted to the customer with an hourly bill rate that is reduced to the NTE hourly bill rate in the contract.

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- B. All quoted hourly bill rates shall include all expenses associated with each candidate, including wages, benefits, DIR Cost Recovery Fee, usual living expenses and costs of commuting to and from the Customer's primary work site designated. Travel reimbursement may be allowed. See Appendix A Terms and Conditions Section 6. C. Payments and Contract Section 4. F. Travel Expense Reimbursement.
- C. Payment of work over 40 hours will be at the hourly rate quoted and must be coordinated and pre-approved through the customer.

**14. Vendor Suspension**

DIR's Right to Suspend Contract for Cause in accordance with this Section. DIR may suspend Vendor's performance of this Contract, in whole or in part, for a period up to 180 calendar days by following the procedure in this paragraph. When a violation of the contract as set forth below occurs, DIR may send a Notice of Intent to Suspend to the Vendor providing the reasons for the proposed suspension. Vendor shall have five (5) business days from receipt of the Notice of Intent to Suspend to provide a written response. At the expiration of the 5 business days, DIR will make a determination whether a violation(s) of the contract occurred. In those instances where a violation is found to have occurred, DIR shall decide on a period of suspension up to 180 calendar days in length and send a written notice of the period of suspension and the related findings to Vendor. The suspension shall be effective from the date of receipt by Vendor. DIR may issue a Notice of Intent to Suspend under the proper circumstances, which include, but are not limited to the events listed below:

- 1) Vendor or Vendor's Worker(s) no longer holds necessary license(s) or certificate(s) required to perform the work under any Work Order;
- 2) Vendor falsifies an invoice for services or travel reimbursement;
- 3) Vendor is prohibited from contacting a Customer to discuss an "open" competitive solicitation during the Work Order Solicitation; however, Vendor is allowed to market their business to Customers.
- 4) Vendor or its Workers have engaged in practices prohibited in Section 6+, Purchase Orders, Invoices and Payments hereof; Section 8, Vendor Responsibilities; hereof; and Section 7, Intellectual Property Matters, in the Contract;
- 5) Vendor or Vendor's Worker commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Vendor's performance under this Contract in accordance with its terms.

**15. Substitution of Workers**

- A. During the ITSAC process for competitive Work Order Solicitations, Vendors can only submit candidates to DIR for the positions being solicited and not directly to the Customer.

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- B.** If Customer determines the Worker does not meet the qualifications needed, has not followed applicable safety standards or for any other reason is unable to complete the assignment satisfactorily, Customer will direct Vendor to resolve the complaint or remove its Worker immediately. If Vendor is unable to resolve the complaint immediately or provide a satisfactory substitute Worker within seven (7) business days, the Purchase Order may be terminated, and Customer may select another Vendor to finish the remaining work as outlined in the Work Order Solicitation
- C.** If a Worker no longer provides services for Vendor, Vendor shall have up to seven (7) business days to replace the Worker with a substitute satisfactory to DIR and its Customer. Vendor shall use its best efforts to provide a substitute Worker at the same, or a lower rate than that charged for the replaced Worker's services. If the rate for the substitute Worker is higher than the rate charged for the replaced Worker's services and the higher rate is unacceptable to DIR, or if the Vendor is unable to provide a satisfactory substitute Worker within seven (7) business days, the appropriate Work Order may be terminated, and DIR may select another Vendor to finish the remaining work.
- D.** In the event the Worker cancels his/her obligation without cause prior to the original termination date, Customer may require the Vendor to provide a replacement to complete the obligation that the departing individual did not fulfill. The replacement must be approved by Customer and will be provided at no charge for a time equal to seven (7) business days, not to exceed fourteen (14) business days. This gratis period is to cover the cost to Customer of retraining the replacement individual on the internal Customer systems.
- E.** Except when a Worker leaves employment voluntarily, the Vendor may not remove a Worker from a project without prior written consent of DIR.
- F.** Vendor is responsible to retrieve from all Workers as they transition from work on a Work Order, whether voluntarily or involuntarily, all keys, access cards, files, equipment and all other property and security devices that may have been issued to Worker by DIR's Customer and to deliver the items to the Customer.

**16. ITSAC Protocol**

- A.** The Vendor shall not hire employees of a DIR Customer and offer such employees as Workers for a Work Order Solicitation on which that employee is currently participating. Unless an employee is released from employment, Vendor shall not hire an employee of another Vendor providing Workers to a DIR Customer and offer such employee as Workers for a Work Order Solicitation on which that Worker is currently participating until such time as the Purchase Order under which that Worker was originally obtained has expired or been terminated pursuant to Section 9.4) b). (Worker/Candidate is responsible for contractual obligations to the Vendor that initially submitted the worker/candidate to the Customer).
- B.** Worker who is currently on contract to a Customer through the DIR ITSAC program will not be considered for additional DIR Work Order Solicitations having overlapping timeframes. However, at the discretion of a DIR Customer, Workers who are currently assigned to a DIR Customer through the DIR ITSAC program may be considered for additional DIR ITSAC work

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from the same DIR Customer. Vendors shall not submit the names of the same Worker for an overlapping time frame unless previously agreed to by the Customer.

**17. Non-Solicitation of State Employees**

- A. Vendor shall not solicit, directly or indirectly, any employee of DIR who is associated with this Contract for a period of 90 calendar days following completion of the Contract. Further, Vendor shall not solicit for a period of 90 days following completion of the Work Order, directly or indirectly, any employee of a DIR Customer who has participated in any projects on which the Vendor's Workers have been assigned.
- B. DIR and its Customer agree not to solicit employees of the Vendor, during the term of the appropriate Work Order, and for a period of 90 calendar days thereafter.

**18. Warranty**

The Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor's employee (candidate) has made errors in completed work. Customer will immediately inform the Vendor of the Customer's determination. Vendor shall make corrections and revisions as necessary to provide the Customer with an acceptable Work Product without cost to Customer. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original work.

**19. 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. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**20. Captions**

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**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

➤ **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
- ☐ Section 2 c. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - No
- ☐ Section 4 - Affirmation
- ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment, including transportation and delivery), complete:**

- ☒ Section 1 - Respondent and Requisition Information
- ☒ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- ☒ Section 3 - Self Performing Justification
- ☒ Section 4 - Affirmation

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



# HUB Subcontracting Plan (HSP)

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

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

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

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

## SECTION-1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Austin Ribbon & Computer Supplies, Inc. State of Texas VID #: 1742339797900  
Point of Contact: Ryan Grant Phone #: 512-452-0651  
E-mail Address: ryan.grant@arc-is.com Fax #: 512-452-0691
- b. Is your company a State of Texas certified HUB? ☒ - Yes ☐ - No
- c. Requisition #: DIR-TSO-TMP-242 Bid Open Date: 04/28/2016

(mm/dd/yyyy)

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-2: RESPONDENT's SUBCONTRACTING INTENTIONS**

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

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

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

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

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

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

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

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

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



Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-2 RESPONDENT's SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-3 SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment, to include transportation and delivery.

Austin Ribbon & Computer Supplies, Inc. does not foresee the need to utilize subcontractors at this time. All services will be performed/fulfilled by ARC personnel.

If this changes in the future ARC will submit a new HUB Subcontracting Plan to DIR.

**SECTION-4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

signature on file

Signature

Ryan Grant

Printed Name

President

Title

4/25/2016Date  
(mm/dd/yyyy)**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.



# HSP Good Faith Effort - Method B (Attachment B)

Rev. 09/15

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc. Requisition #: DIR-TSO-TMP-242

**IMPORTANT:** If you responded "**No**" to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If Yes, continue to SECTION B-4.)

☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

**a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbldsearch/index.jsp>. HUB status code "**A**" signifies that the company is a Texas certified HUB.

**b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

**c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

**d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 09/15

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.

Requisition #: DIR-TSO-TMP-242

## SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

## SECTION: A PRIME CONTRACTOR'S INFORMATION

Company Name:	<u>Austin Ribbon &amp; Computer Supplies, Inc.</u>	State of Texas VID #:	<u>1742339797900</u>
Point-of-Contact:	<u>Ryan Grant</u>	Phone #:	<u>512-452-0651</u>
E-mail Address:	<u>ryan.grant@arc-is.com</u>	Fax #:	<u>512-452-0691</u>

## SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name:			
Point-of-Contact:		Phone #:	
Requisition #:	<u>DIR-TSO-TMP-242</u>	Bid Open Date:	<u>04/28/2016</u> (mm/dd/yyyy)

## SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_ .  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).*

*(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

### 2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: ☐ - Not Applicable

4. Bonding/Insurance Requirements: ☐ - Not Applicable

5. Location to review plans/specifications: ☐ - Not Applicable

Vendor Name: GTS Technology Solutions, Inc.

Category	Title	Level	Pricing		
			Not-to-Exceed Rate (\$ per Hour)		
			Technology Type		
			Legacy	Core	Emerging
			NTE Rate	NTE Rate	NTE Rate
Applications	Programmer/ Developer Analyst	Developer Analyst 1	\$76.42	\$73.45	\$76.56
		Developer Analyst 2	\$81.63	\$85.98	\$96.52
		Developer Analyst 3	\$104.21	\$100.40	\$113.53
	Programmer/Developer	Developer 1	\$72.95	\$71.20	\$75.01
		Developer 2	\$86.84	\$83.75	\$94.26
		Developer 3	\$99.00	\$97.25	\$109.39
	Software Test Analyst	Software Test Analyst 1	\$60.79	\$65.28	\$71.39
		Software Test Analyst 2	\$65.88	\$71.07	\$82.57
		Software Test Analyst 3	\$76.46	\$81.99	\$96.43
	Technical Writer	Technical Writer 1	\$48.17	\$51.98	\$56.19
		Technical Writer 2	\$56.90	\$61.03	\$65.57
		Technical Writer 3	\$66.11	\$69.01	\$76.10
	Business Analyst	Business Analyst 1	\$64.68	\$70.15	\$76.40
		Business Analyst 2	\$85.10	\$87.06	\$90.01
		Business Analyst 3	\$105.94	\$105.94	\$106.02
	System Analyst	System Analyst 1	\$65.25	\$65.45	\$81.37
		System Analyst 2	\$75.77	\$87.03	\$95.50
		System Analyst 3	\$88.43	\$102.47	\$106.40
Data Management	Database Architect	Database Architect 1	\$79.58	\$76.68	\$83.38
		Database Architect 2	\$93.42	\$95.23	\$97.31
		Database Architect 3	\$121.58	\$130.26	\$130.26
	Data Warehouse Architect	Data Warehouse Architect 1	\$88.23	\$88.58	\$88.58
		Data Warehouse Architect 2	\$96.88	\$97.26	\$101.25
		Data Warehouse Architect 3	\$118.10	\$118.10	\$118.44
	Database Administrator	Database Administrator 1	\$78.16	\$80.16	\$86.63
		Database Administrator 2	\$83.04	\$93.61	\$101.54
		Database Administrator 3	\$102.47	\$116.37	\$118.72
Enterprise Architect	Enterprise Architect	Enterprise Architect 1	\$128.52	\$130.04	\$143.75
		Enterprise Architect 2	\$154.58	\$168.47	\$167.51
Project Management	Project Manager	Project Manager 1	\$84.93	\$96.73	\$105.63
		Project Manager 2	\$103.67	\$116.33	\$125.20
	Project Lead	Project Lead 1	\$80.84	\$87.16	\$94.07
		Project Lead 2	\$95.42	\$108.37	\$116.95
Telecom/Networking	Network Engineer	Network Engineer 1	\$77.02	\$88.58	\$99.07
		Network Engineer 2	\$94.21	\$113.31	\$123.18
	Network Administrator	Network Administrator 1	\$55.97	\$57.67	\$65.73
		Network Administrator 2	\$65.75	\$76.42	\$87.15
		Network Administrator 3	\$62.82	\$82.15	\$90.78
Security	Security Analyst	Security Analyst 1	\$88.66	\$99.99	\$111.48
		Security Analyst 2	\$100.51	\$113.22	\$126.76
	Security Engineer	Security Engineer	\$105.78	\$119.46	\$135.03
	Security Architect	Security Architect	\$128.25	\$161.97	\$161.97
Customer Technical Support	Help Desk	Help Desk 1	\$39.95	\$42.98	\$47.11
		Help Desk 2	\$47.00	\$53.12	\$55.08
		Help Desk 3	\$54.92	\$58.60	\$63.58
	Technical Support	Technical Support 1	\$46.13	\$42.00	\$57.23
		Technical Support 2	\$56.73	\$58.71	\$66.58
		Technical Support 3	\$63.20	\$67.80	\$76.38
Information Technology Service Management (ITSM Operations)	Organizational Change Management/OCM Analyst	OCM Analyst 1	\$90.31	\$90.31	\$90.31
		OCM Analyst 2	\$119.84	\$119.84	\$119.84
IT Marketing	Information Technology Communication Coordinators	IT Communications Coordinator 1	\$57.31	\$57.31	\$57.31
		IT Communications Coordinator 2	\$81.63	\$81.63	\$81.63
Information Technology Training	IT End Users Trainer	End User Trainer 1	\$76.42	\$76.42	\$76.42
		End User Trainer 2	\$100.73	\$100.73	\$100.73
Information Technology Contract Management	IT Contract Manager	IT Contract Manager 1	\$97.26	\$97.26	\$97.26
		IT Contract Manager 2	\$118.10	\$118.10	\$118.10

City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Discussion and possible recommendation to approve a Finance Lead to assist with Finance tasks for the Workday implementation utilizing the Texas Department of Information Resources (DIR) Information Technology Staff Augmentation Contract (ITSAC) with GTS Technology Solutions in the amount of \$198,720.--Leigh Wallace, Finance Director

**ITEM SUMMARY:**

The Workday project team is now 6 months into the 24 month implementation project. During Phase I HR/Payroll, the team has struggled to adequately staff both the project and the regular department duties of HR, Finance and IT. The team is requesting this additional one-time implementation assistance to alleviate overlapping project workload for the Controller. The Controller is a key functional lead in Phases I, II and III as the Manager over payroll, Manager of all other Accounting functions, and partner in the budget process.

The City of Georgetown, following the Texas Department of Information Resources Best Value IT Staff Services Process has identified Financial Lead that meets the needs of the City and has an extensive financial background as well as familiarity with City of Georgetown finance practices and processes. The candidate also has extensive experience in the Information Technology field implementing large scale projects similar to the Workday system. The staffing services will be utilized for a 10-month engagement.

Candidate resumes for the Lead Finance role were submitted from GTS that has a contract with DIR. After reviewing the applications received and reference checks an interview was scheduled with Finance and IT team members. After the interview performed, the selection team met to discuss the candidate. After discussion the team unanimously agreed that this candidate is a good match for our immediate needs.

The staffing services will be procured through GTS Technology Solutions utilizing Texas DIR contract DIR-TSO-3504.

**FINANCIAL IMPACT:**

Total cost of the staffing services for 10 months is estimated at \$198,720. This estimate is provided based on a maximum 1728 hours. Actual working time will exclude city holidays. Hours worked will be reported and monitored on a weekly basis and approved by the City's Finance Director before they can be billed.

Funding is available through the remainder of Fiscal Year 2019 (May – Sept) by reallocating existing resources such as project contingency, vacancy savings in Finance, and excess IT fund balance. Funding in FY2020 for the remainder of the contract is dependent upon Council approval of a budget request to issue additional CO debt for these one-time implementation costs.

**SUBMITTED BY:**

Leigh Wallace, Finance Director

**ATTACHMENTS:**



	<b>Description</b>	<b>Type</b>
📄	Michael Peters Resume	Backup Material
📄	Quote	Backup Material
📄	DIR Contract	Backup Material



**Michael C. Peters**  
**Presented By: Jenny Kertsos**

## **Information Technology Applications and Operations**

Driven and results-oriented leader with over 20 years of experience guiding IT software initiatives and process design for diverse corporations. Dedicated to proficiently leading cross functional teams and analyzing existing issues in order to develop advanced solutions that generate improved work flow process and contribute to the achievement of corporate business goals. Areas of expertise include:

---

Software Implementation • Program Management • Process Design • Project Management • Team Liaison  
Applications Management • System Requirements • Testing • Issue Resolution • Research and Analysis System  
Configuration • Process Training • Program Management • Cross-Functional Communication

---

### **INDEPENDENT CONSULTANT • 2015-Present**

Assisted with software requirements, vendor/product selection, contract negotiation and acquisition for a \$4+ Million implementation of the Itineris Customer Information System (CIS) for a local utility, including limited assistance during the implementation phase. Also coached work teams on leadership processes using methodologies from "Multipliers" by Liz Wiseman and Gallup's "CliftonStrengths".

### **CITY OF GEORGETOWN, Texas • 2009-2015**

Municipal government and electric/water utility for 50,000 citizens north of Austin, TX, with 550 employees and an annual budget of \$200+ Million.

#### **Director, Information Technology**

Led a staff of 17 providing all IT services for the City and its utilities, including data center operations, application selection and implementation, end user support, etc. Provided IT leadership for numerous application implementations including Enterprise Asset Management, Computer Aided Dispatch and Automated Metering Infrastructure as well as many infrastructure upgrades (including server virtualization, virtual desktop infrastructure, mobile device initiatives and Exchange 2010). Provides all policy, budget and financial management for IT, including coordination with senior management and the City Council.

### **FLEXTRONICS, Austin, Texas • 2006-2009**

Global electronic manufacturing services firm, (formerly Soletron Corporation) based in Singapore with 200K employees and \$34B in sales.

#### **Director, Global Procurement Organization, Business Operations**

Spearheaded global business team guiding deployment of Kinaxis RapidResponse advanced planning software throughout manufacturing sites. Direct project management and planning while leading staff of up to 6 talented team members during each implementation. Design project roadmaps, related business processes, issue research and resolution.

- Led business team management of 2 RapidResponse upgrade projects.
- Directed software implementation at 14 Flextronics manufacturing sites.
- Achieved highest annual performance rating in first year, promotion during 2<sup>nd</sup> year.
- Directed RapidResponse IT team for 3 months due to staff departure, recognized by group VP.
- Created standardized testing procedures used in all site implementations.

### **NETAPP, Inc., Sunnyvale, California • 1999-2006**

Data storage/management solutions company with \$3B annual sales through direct and indirect channels.

#### **Director, Information Technology**

Guided application development and operations for finance and manufacturing systems. Supervised staff of 30 talented team members including 3 direct reports. Functioned as liaison between manufacturing and finance business leaders, while managing \$13M annual budget. Managed system development, enhancement, uptime and performance while simultaneously nurturing and advancing high-performing staff members.



TECHNOLOGY SOLUTIONS

**Michael C. Peters**

**Presented By: Jenny Kertsos**

- Directed \$25M project to implement global replacement of legacy systems with Oracle 11i ERP, using a customized version of the Oracle On Demand Service
- Served as interim CIO (4 months), developed \$105M annual budget while supervising over 200 employees.
- Coordinated all IT audit activities, including efforts to achieve first year Sarbanes-Oxley compliance.
- Guided upgrade initiatives for Oracle 11i ERP system utilized by the manufacturing and finance teams.
- Slashed order communication time by implementing real-time closed-loop integration of company's business systems with its largest supply chain partner.
- Deployed first advanced planning tool for the manufacturing operation and executed several projects over 6 years to support NetApp's Configure to Order (CTO) business model.
- Elevated work volume and project quality while lowering expenses by instituting improved system development life cycle procedures and leveraging offshore development resources
- Achieved several internal project awards, plus an award from Kinaxis Corporation for innovative tailoring of its RapidResponse product within NetApp.

**PHILIPS SEMICONDUCTORS, Sunnyvale, California • 1996-1998**

Leading global manufacturer of semiconductors with \$4B in annual sales.

**Manager, Strategic Systems Group**

Led team designated to restructure IT support system for the U.S. operation from internal groups to outsourced models utilizing EDS. Transitioned several IT groups including IT operations, applications development, as well as desktop and network support, to EDS over 2 years. Managed daily contract issues and logistics for \$26M annual account with EDS, including 250 EDS employees. Also managed internal staff of 4 cross-functional team members in IT policy development, billing, and contract management.

- Directed changeover of desktop and network teams to EDS in 3 weeks.
- Spearheaded \$4M Y2K remediation initiative to ensure all company applications were Y2K ready.
- Instituted advanced chargeback system to provide individual departments keen visibility of their billings from EDS.

**ADDITIONAL POSITIONS**

**PACIFIC LIFE • Manager, Real Estate Systems • 1990-1996:**

Managed all systems for the Real Estate Group including applications, networks and desktops. Administered complex loan servicing application for commercial mortgages and corporate REO. Led technical management for loan servicing system enhancements supporting corporate entry into the CMBS servicing market. Piloted restructuring efforts for primary loan servicing system into new technologies in collaboration with the software provider and several other customers.

**PRICE WATERHOUSE • Accounting / Management Consulting / Project Management • 1980 – 1990:**

Guided deployment of real estate-specific systems at several divisions of Trammel Crow Co., Bell Canada Enterprises, Olympia and York. Served as consultant on REO processes for over 4K properties involved in FDIC takeover of First Republic and Interfirst banks in Texas. Conducted numerous IT reviews for audit clients.

**EDUCATION/TRAINING**

Masters of Business Administration

Pepperdine University, Malibu, California

**Bachelor of Business Administration**

University of Wisconsin, Oshkosh, Wisconsin

Certified Public Accountant (Wisconsin), Certified Information Systems Auditor



TECHNOLOGY SOLUTIONS

9211 Waterford Centre Blvd, Suite 125  
Austin, TX 78758

3/20/2019  
Greg Berglund

**GTS DIR#-TSO-3504**

Re: Quote for Mike Peters  
Project Lead 2 Emerging  
\$115.00 per hour  
1728 hours  
Total.....\$198,720.00

Thank you,

**JENNY KERTSOS**

*Account Executive, Staffing*

---

**P** 540.847.2996   **F** 512.452.0691  
jenny.kertsos@gts-ts.com



TECHNOLOGY SOLUTIONS

## Scope of Services

Pursuant to the DIR-TSO-3504, GTS shall provide Mike Peters as Project Lead 2 Emerging at the rate and rank as provided above for City of Georgetown's implementation of the Workday ERP System (the "Project"). The Project Lead will be on-site at the City for 10 months. Mike Peters, or any candidate provided as a replacement pursuant to the terms of DIR-TSO-3504, must have the following skills and perform the following services:

The Project Lead (Accounting) will manage Workday engagements according to City of Georgetown's financial/cost management policies. The Project Lead will actively encourage and facilitate communication between the business analysts and accounting teams, and ensure that requirements are documented, complete, accurate, approved, and on budget.

- Under direction of Finance Director and Controller, act as a high-level ERP project advisor to the Finance and Administration Department
- Provide project related experience and advice to City leadership on the best practices for implementing an enterprise class ERP system, particularly in the areas of Finance, Accounting, Human Resources, and Information Technology
- Attend Workday BPA, Design, and other project meetings as a representative of the Finance department; and in some cases "in lieu of" the Finance Director, Controller, or other F&A staff.
- Thoroughly communicate key business and technical issues to F & A management staff as well as other City staff at all levels of the organization.
- Develop alternatives for dealing with project issues based on personal knowledge, input from all levels of City Staff, and direction from Finance Director or Controller.
- Effectively communicate alternatives to City staff.
- Works with Finance and Human Resources to define and manage policies and procedures
- Facilitate good decision making in regards to choosing the best alternative for each issue.
- Enterprise Resource Planning (ERP), Financials implementation, and upgrade experience
- Strong verbal and analytical skills
- Detailed understanding of ERP System concepts and general module functionality
- Act as primary expert to construct specific solution, scope document, risk profile, and corresponding financials
- Act as a high-level ERP project advisor to the Human Resources department as needed.
- Ability to follow all organizational Standard Operating Procedures relative to cost modeling, approvals and reviews, and all other associated workflow and deliverables

The Project Lead will represent the interest of the City of Georgetown and be responsible for working with the Accounting Team.

Vendor Contract No. \_\_\_\_\_

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES**

**ARC GOVERNMENT SOLUTIONS, INC.**

1. DIR acknowledges the name change of this contract to ARC Government Solutions, Inc. from Austin Ribbon & Computer Supplies, Inc., effective as of the last date of signature; DIR shall change the contract documents hereafter to ARC Government Solutions, Inc.
2. ARC Government Solutions, Inc. hereby represents to DIR that it owns the Contract and agrees to perform all duties and obligations to be performed by Vendor. ARC Government Solutions, Inc. hereby represents to DIR that by the effective date of this Contract that it is registered as a Texas Vendor, with all necessary Texas taxpayer identification numbers with the Comptroller of Public Accounts and be in good standing with that office, and otherwise be authorized to do business with the State of Texas.

**3. Introduction**

**A. Parties**

This Contract for Services ("Contract") is entered into between the State of Texas ("State"), acting by and through the Department of Information Resources ("DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and ARC Government Solutions, Inc. ("Vendor"), with its principal place of business at 9211 Waterford Centre Blvd., Ste. 202, Austin, TX 78758.

**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-242, on March 29, 2016, for Information Technology Staffing Augmentation Contracts. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-242 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Information Technology Staff Augmentation Contracts (ITSAC); Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Services and Pricing Index; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-242, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-242, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1 and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

Vendor Contract No. \_\_\_\_\_

**4. 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, DIR may extend this Contract, by amendment, for up to two (2) optional one-year terms. If there are no sales at the end of the initial term, this Contract will not be extended. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional renewal terms.

**5. Service Offerings**

Services available under this contract are limited to information technology staff augmentation services as specified in Appendix C, Services and Pricing Index.

**6. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

**7. 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 one percent (1.00 %). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000.00 shall be \$1,000.00.

**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 by Vendor in the price to the Customer.

**8. Notification**

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

If sent to the State:

Shannon Kelley, CTPM, CTCM  
Manager, Enterprise Contract Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 463-7666  
Facsimile: (512) 475-4759  
Email: [Shannon.Kelley@dir.texas.gov](mailto:Shannon.Kelley@dir.texas.gov)

If sent to the Vendor:

Ryan Grant  
Austin Ribbon and Computer Supplies, Inc.  
9211 Waterford Centre Blvd., Ste. 202  
Austin, TX 78758  
Phone: (512) 452-0651  
Facsimile: (512) 452-0691  
Email: [ryan.grant@arc-is.com](mailto:ryan.grant@arc-is.com)

Vendor Contract No. \_\_\_\_\_

**9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Information Technology Staff Augmentation Services (ITSAC).**

No exceptions have been agreed to by DIR and Vendor.

Remainder of page intentionally left blank



Vendor Contract No. \_\_\_\_\_

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

**ARC GOVERNMENT SOLUTIONS, INC.**

**Authorized By:** signature on file

**Name:** Ryan Grant

**Title:** President

**Date:** 7/21/2016

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

**Authorized By:** signature on file

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 7/28/2016

**Office of General Counsel:** DB 7/28/2016

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR  
INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES (ITSAC)**

**GTS TECHNOLOGY SOLUTIONS, INC.**

**formerly**

**ARC GOVERNMENT SOLUTIONS, INC.**

1. DIR acknowledges the name change to GTS Technology Solutions, Inc. from ARC Government Solutions, Inc. with its principal place of business at 9211 Waterford Centre Blvd, Suite 202, Austin, TX 78758. Effective date of change is September 26, 2016. DIR agrees to change all contract files to the new name.
2. GTS Technology Solutions, Inc. hereby agrees to perform all duties and obligations to be performed by Vendor under Contract DIR-TSO-3504 to the same extent as if it had been an original party thereto.
3. GTS Technology Solutions, Inc. also represents that 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 §231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate.
4. GTS Technology Solutions, Inc. hereby represents it is authorized to do business in the State of Texas and is in good standing with the Comptroller of Public Accounts.

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

Remainder of page intentionally left blank

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

**GTS TECHNOLOGY SOLUTIONS, INC.**

**Authorized By:** signature on file

**Name:** Ryan Grant

**Title:** President

**Date:** 10/21/2016

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

**Authorized By:** signature on file

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 10/27/2016

**Office of General Counsel:** DB 10/25/2016

**Amendment Number 2**  
**to**  
**Contract Number DIR-TSO-3504**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**GTS Technology Solutions, Inc.**

This Amendment Number 2 to Contract Number DIR-TSO-3504 ("Contract") is between the Department of Information Resources ("DIR") and GTS Technology Solutions, Inc. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. Contract, Section 2. Term of Contract, is amended by the addition of the following:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through July 28, 2019, or until terminated pursuant to the termination clauses contained in the Contract. The contract will renew automatically in one-year increments for one (1) additional year under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. Contract, Section 6. Notification is hereby amended as follows: All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:  
Kelly A. 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

3. Appendix A. Standard Terms and Conditions For Product and Related Services Contracts dated 03/22/2016, is here by restated in its entirety and replaced with the attached Appendix A. Standard Terms and Conditions For Information Technology Staffing Augmentation Contracts (ITSAC) dated 09/29/2017.

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

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 7/28/2018.

**GTS Technology Solutions, Inc.**

**Authorized By:** Signature on File

**Name:** Ryan Grant

**Title:** President

**Date:** 7/10/2018

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

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 7/16/2018

**Office of General Counsel:** DB 7/11/2018

**Appendix A Standard Terms and Conditions for  
INFORMATION TECHNOLOGY STAFF AUGMENTATION CONTRACT  
(ITSAC)**

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**Appendix A Standard Terms and Conditions for  
INFORMATION TECHNOLOGY STAFF AUGMENTATION CONTRACT  
(ITSAC)**

**1. No Quantity Guarantees**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The Contract is not exclusive to the Vendor. Customers may obtain 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 services will be procured through the Contract.

**2. 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, 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.

**Appendix A Standard Terms and Conditions for  
INFORMATION TECHNOLOGY STAFF AUGMENTATION CONTRACT  
(ITSAC)**

- 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. 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. 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).
- G. State** – refers to the State of Texas.
- H. DIR** – refers to the Department of Information Resources.
- I. Acceptable Candidate** – refers to a candidate that meets the stated requirements pursuant to a Work Order Solicitation and is correctly identified and priced using the ITSAC Category Pricing as defined in Exhibit B.
- J. Active Vendor** – refers to Vendors that are given access to opportunities presented through Work Order Solicitations.
- K. Best Value Selection** – refers to Work Order Solicitation selections made by Customers that do not follow the competitive posting and review process. The Customer informs DIR of the intent to select a Worker and submits the appropriate procurement documentation required for the selection. Customer will determine the criteria for Best Value Selection and whether or not to use this procurement.
- L. Evaluation Period** – refers to the three-calendar month period that coincides with the State fiscal calendar. The evaluation periods are September 1, to November 30; December 1 through February 28; March 1 to May 31 and June 1 through August 31st.
- M. Evaluation Status** – refers to the evaluation that is provided quarterly. It is one of two values: Acceptable or Unacceptable. Vendor shall be evaluated on its performance relative to the performance of other Vendors in the same grouping.
- N. Hourly Rate** – refers to the rate that is charged by the Vendor and paid by the Customer for services rendered by Worker(s) under this contract. It is calculated and communicated in terms of dollars per hour.
- O. Interviewed Candidate** – refers to an Acceptable Candidate that was interviewed by the Customer pursuant to a Work Order Solicitation.
- P. Invoice** – refers to a Customer approved instrument submitted by Vendor for payment of services.
- Q. ITSAC** – refers to the IT Staff Augmentation Contract document executed between DIR and Vendor.
- R. Not to Exceed (NTE)** – refers to the maximum hourly rate for which a Vendor has agreed to provide Worker(s). By this contract, Vendor can provide Worker(s) at a lower hourly rate, but not a higher hourly rate.
- S. Opportunity Response Time** – refers to the time within which a Vendor is expected to respond to a Work Order Solicitation with the appropriate resume(s). The metric used for expected opportunity response time is as established by the Customer.
- T. Placed Candidate** – refers to an Interviewed Candidate that was selected by the Customer pursuant to a Work Order Solicitation.
- U. Purchase Order** – refers to 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).

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- V. Rate Schedule** – refers to the set of competitive, market driven, standardized rates that will document the NTE hourly rates for ITSAC Workers.
- W. TPASS** – refers to the Texas Procurement and Support Services Division of the Comptroller of Public Accounts (CPA).
- X. Vendor** – refers to awarded Information Technology Staff Augmentation Contract (ITSAC) Vendor.
- Y. Worker(s)** – refers to identified individual(s) who perform authorized services under the supervision of Vendor for DIR Customers and who are employees and/or subcontractors of the Vendor.
- Z. Work Order Solicitation** – refers to a document submitted to Vendor by DIR outlining the description of services to be performed for a specified DIR Customer. Work Order Solicitation will include: Number of Workers, Worker skills and qualifications required by the DIR Customer, the number of hours to be worked, duration of engagement with the DIR Customer, authorized travel, and other relevant information. The term also includes Best Value Selections made by Customers, in which the Customer defines Best Value Selection and informs DIR of the intent to select a Worker and submits the appropriate procurement documentation required for the selection.

**3. 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 Vendor 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 Vendor.

**C. Invalid Term or Condition**

- 1)** To the extent any term or condition in the Contract conflicts with the applicable Texas

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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 do not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

**2)** If one or more term or condition 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 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 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 two 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,

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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.

**4. 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.

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**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

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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.



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**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.

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**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.

**5. Terms and Conditions Applicable to State Agency Purchases Only**

**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 of Texas 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 thirty (30) 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 of Texas 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 5.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

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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 5.B.

**6. 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 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 services available under the Contract shall be processed through the Contract.

**B. Internet Access to Contract and Pricing Information**

**1) Vendor Webpage**

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

- a) the services awarded and services description;
- b) contact information (name, telephone number and email address) for Vendor;
- c) instructions for obtaining quotes and placing Purchase Orders;
- d) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- e) a link to the DIR "Cooperative Contracts" webpage for ITSAC Contracts; and
- f) 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

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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 website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

**4) Webpage Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to 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 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.

**C. Services Warranty and Return Policies**

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

**D. DIR Logo**

Vendor 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 Vendor logo, (iii) the DIR logo is only used to communicate the availability of services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

**E. Vendor Logo**

If DIR receives the Vendor's prior written approval, DIR may use the Vendor's name and logo in the promotion of the Contract to communicate the availability of services under the

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Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor'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 trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

**F. Trade Show Participation**

At DIR's discretion, Vendor 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 expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor 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 booth.

**G. Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Vendor will be required to attend an orientation meeting to discuss the content and procedures of the Contract to included 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 for attendance at the meeting.

**H. 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.

**I. 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 service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services.

**7. Purchase Orders, Invoices, and Payments**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A-E.**

**A. Purchase Orders**

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

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**B. Invoices**

Invoices shall be submitted by the Vendor directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to the Vendor.

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 services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

The administrative fee specified in Section 5.A., DIR Administrative Fee, of the contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**C. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) 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.

**D. Tax-Exempt**

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

**E. Travel Expense Reimbursement**

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

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**8. Contract Administration**

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

**A. Contract Administrators**

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators 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) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of pricing and 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 Vendor and a Customer, and iii) advising DIR of Vendor's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager the assigned Contract Manager is not, in the 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 services purchased under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

**b)** DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books. 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 (15<sup>th</sup>) calendar day of the month following the month of the sale. If the 15<sup>th</sup> calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, 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

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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.

If Vendor submits three (3) monthly sales reports or cost recovery fee payments late within a 12-month period beginning upon execution of this Contract, DIR reserves the right to suspend or terminate this Contract for cause per Section 10.B.4.a. of Appendix A, Termination for Cause. If Vendor is late with its monthly sales report, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly report is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly sales reports. If Vendor is late with its monthly administrative fee payment, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly administrative fee payment is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly administrative fee payments. DIR does not waive any other contractual remedy pursuant to this Contract.

**3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor shall electronically provide each Customer with their 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



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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 administrative 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 at DIR's expense.

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

**C. Records and Audit**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH 1).**

**1)** Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, 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 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 and the requirement to cooperate is included in any subcontract 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 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: Customer name, invoice date, invoice number, description, quantity, 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

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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) 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 Vendor 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**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

**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.

**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.

**9. 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 SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR 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

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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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) 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. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES

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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, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS 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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.**

**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)*

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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) 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;
- (xii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiv) under Section 2155.006 and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvi) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xvii) 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.

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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, 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 Fulfillers 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 Organization 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.

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**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 Certification Statement of Exhibit A of the RFO and/or Section 9.C. (xii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

**H. Confidentiality**

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

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

Vendor and/or Order Fulfiller may, from time to time during the performance of the 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 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 shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

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

Prior to commencement of any services, background and/or criminal history investigation of the Vendor'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 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.

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**K. Limitation of Liability**

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

**L. Overcharges**

**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



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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 \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. 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 PER ACCIDENT, \$1,000,000 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;
- 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 of Texas 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 of Texas 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

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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 Managed Services Products and/or Services**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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

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

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

**W. Vendor Reporting Responsibilities**

**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 83<sup>rd</sup> Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

**10. Contract Enforcement**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 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.

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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 §20.1115) 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 services, they are obligated to pay for the services or they may 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

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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 19.A, Notices, of intent to terminate.

**3) Termination for Convenience**

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

**4) Termination for Cause**

**a) Contract**

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

**b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. 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 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

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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 Vendor 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 Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

**11. Statement of Services to Be Performed**

- A.** Vendor shall provide Worker(s) to DIR Customers to perform services that are defined in the Work Order Solicitation, in accordance with the terms and conditions of the Contract. Workers provided by Vendor shall possess qualifications that meet or exceed those specified in the Work Order Solicitation and will perform the functions as outlined in the Work Order Solicitation at the rates quoted therein. All travel is subject to the prior, written approval of the Customer.
- B.** Vendor understands that this is a non-exclusive, indefinite quantity contract. DIR makes no representations or warranties that Vendor shall receive any number or volume of Work Order Solicitations hereunder.

**12. Work Order Solicitation / Purchase Order Issuance**

- A.** In order to be awarded a Purchase Order hereunder, except for Best Value Selection, Vendors will respond to Work Order Solicitation(s) for services as issued by DIR on behalf of its

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Customers, consistent with the Terms and Conditions of this Contract. Vendor understands that no work under any Purchase Order issued by Customer shall commence until receipt of Purchase Order. Vendor will perform in accordance with the terms and conditions of the Customer Purchase Order.

- B.** Customer specifications may include pre-selection requirements that potential Vendors (and their Worker) submit to and satisfy criminal background checks as authorized by Texas law.
- C.** Vendors cannot submit resumes outside of the process for competitive solicitations. (except when customer is using best value).
- D.** Vendor shall direct all communications concerning this Contract and any Work Order Solicitation(s) to DIR except for Customer initiated communications, the interview, the hiring process and Best Value Selections.
- E.** Vendor is prohibited from submitting a substitute candidate during the interview process if the original candidate is no longer available. Vendor may offer a replacement candidate, if the Purchase Order (PO) has been issued and the original candidate is no longer available.
- F.** Duplicate submissions of a candidate will be disqualified, if one or more Vendors submit the same candidate for the same competitive solicitation.
- G.** Together with each resume submitted, Vendor must submit a Right to Represent, signed by the proposed Worker, authorizing the Vendor to submit Worker's resume for that Work Order Solicitation. If Multiple Vendor's submit resumes and a Right to Represent for the same Worker for a given Work Order Solicitation, then that worker will be disqualified from consideration for the Work Order Solicitation.
- H.** DIR will not promulgate a standard candidate resume format/layout. Awarded Vendor may submit candidate resumes in desired company format/layout. DIR will require Vendor to submit the approve DIR cover sheet with the candidate resume.
- I.** Best Value Selections. Customer shall select the candidate and provide DIR with the appropriate procurement documentation to support the selection.

**13. Hourly Rates**

- A.** The Vendor shall quote hourly bill rates to DIR in response to Work Order Solicitation(s) provided by DIR on behalf of its Customer during the term of this Contract. Hourly bill rates shall not exceed awarded NTE bill rates in this Contract. Hourly rates quoted in a particular Purchase Order shall remain valid for a period of time specified in the Purchase Order. Vendor shall not increase its rates under any Purchase Order, including amendments/Purchase Order Change Notice (POCN) thereto, without the express prior written approval of Customer. In the event, that the Vendor submits an hourly bill rate that exceeds the NTE bill rate in the contract, the candidate will be submitted to the customer with an hourly bill rate that is reduced to the NTE hourly bill rate in the contract.

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- B. All quoted hourly bill rates shall include all expenses associated with each candidate, including wages, benefits, DIR Cost Recovery Fee, usual living expenses and costs of commuting to and from the Customer's primary work site designated. Travel reimbursement may be allowed. See Appendix A Terms and Conditions Section 6. C. Payments and Contract Section 4. F. Travel Expense Reimbursement.
- C. Payment of work over 40 hours will be at the hourly rate quoted and must be coordinated and pre-approved through the customer.

**14. Vendor Suspension**

DIR's Right to Suspend Contract for Cause in accordance with this Section. DIR may suspend Vendor's performance of this Contract, in whole or in part, for a period up to 180 calendar days by following the procedure in this paragraph. When a violation of the contract as set forth below occurs, DIR may send a Notice of Intent to Suspend to the Vendor providing the reasons for the proposed suspension. Vendor shall have five (5) business days from receipt of the Notice of Intent to Suspend to provide a written response. At the expiration of the 5 business days, DIR will make a determination whether a violation(s) of the contract occurred. In those instances where a violation is found to have occurred, DIR shall decide on a period of suspension up to 180 calendar days in length and send a written notice of the period of suspension and the related findings to Vendor. The suspension shall be effective from the date of receipt by Vendor. DIR may issue a Notice of Intent to Suspend under the proper circumstances, which include, but are not limited to the events listed below:

- 1) Vendor or Vendor's Worker(s) no longer holds necessary license(s) or certificate(s) required to perform the work under any Work Order;
- 2) Vendor falsifies an invoice for services or travel reimbursement;
- 3) Vendor is prohibited from contacting a Customer to discuss an "open" competitive solicitation during the Work Order Solicitation; however, Vendor is allowed to market their business to Customers.
- 4) Vendor or its Workers have engaged in practices prohibited in Section 6+, Purchase Orders, Invoices and Payments hereof; Section 8, Vendor Responsibilities; hereof; and Section 7, Intellectual Property Matters, in the Contract;
- 5) Vendor or Vendor's Worker commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Vendor's performance under this Contract in accordance with its terms.

**15. Substitution of Workers**

- A. During the ITSAC process for competitive Work Order Solicitations, Vendors can only submit candidates to DIR for the positions being solicited and not directly to the Customer.



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- B.** If Customer determines the Worker does not meet the qualifications needed, has not followed applicable safety standards or for any other reason is unable to complete the assignment satisfactorily, Customer will direct Vendor to resolve the complaint or remove its Worker immediately. If Vendor is unable to resolve the complaint immediately or provide a satisfactory substitute Worker within seven (7) business days, the Purchase Order may be terminated, and Customer may select another Vendor to finish the remaining work as outlined in the Work Order Solicitation
- C.** If a Worker no longer provides services for Vendor, Vendor shall have up to seven (7) business days to replace the Worker with a substitute satisfactory to DIR and its Customer. Vendor shall use its best efforts to provide a substitute Worker at the same, or a lower rate than that charged for the replaced Worker's services. If the rate for the substitute Worker is higher than the rate charged for the replaced Worker's services and the higher rate is unacceptable to DIR, or if the Vendor is unable to provide a satisfactory substitute Worker within seven (7) business days, the appropriate Work Order may be terminated, and DIR may select another Vendor to finish the remaining work.
- D.** In the event the Worker cancels his/her obligation without cause prior to the original termination date, Customer may require the Vendor to provide a replacement to complete the obligation that the departing individual did not fulfill. The replacement must be approved by Customer and will be provided at no charge for a time equal to seven (7) business days, not to exceed fourteen (14) business days. This gratis period is to cover the cost to Customer of retraining the replacement individual on the internal Customer systems.
- E.** Except when a Worker leaves employment voluntarily, the Vendor may not remove a Worker from a project without prior written consent of DIR.
- F.** Vendor is responsible to retrieve from all Workers as they transition from work on a Work Order, whether voluntarily or involuntarily, all keys, access cards, files, equipment and all other property and security devices that may have been issued to Worker by DIR's Customer and to deliver the items to the Customer.

**16. ITSAC Protocol**

- A.** The Vendor shall not hire employees of a DIR Customer and offer such employees as Workers for a Work Order Solicitation on which that employee is currently participating. Unless an employee is released from employment, Vendor shall not hire an employee of another Vendor providing Workers to a DIR Customer and offer such employee as Workers for a Work Order Solicitation on which that Worker is currently participating until such time as the Purchase Order under which that Worker was originally obtained has expired or been terminated pursuant to Section 9.4) b). (Worker/Candidate is responsible for contractual obligations to the Vendor that initially submitted the worker/candidate to the Customer).
- B.** Worker who is currently on contract to a Customer through the DIR ITSAC program will not be considered for additional DIR Work Order Solicitations having overlapping timeframes. However, at the discretion of a DIR Customer, Workers who are currently assigned to a DIR Customer through the DIR ITSAC program may be considered for additional DIR ITSAC work

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from the same DIR Customer. Vendors shall not submit the names of the same Worker for an overlapping time frame unless previously agreed to by the Customer.

**17. Non-Solicitation of State Employees**

- A. Vendor shall not solicit, directly or indirectly, any employee of DIR who is associated with this Contract for a period of 90 calendar days following completion of the Contract. Further, Vendor shall not solicit for a period of 90 days following completion of the Work Order, directly or indirectly, any employee of a DIR Customer who has participated in any projects on which the Vendor's Workers have been assigned.
- B. DIR and its Customer agree not to solicit employees of the Vendor, during the term of the appropriate Work Order, and for a period of 90 calendar days thereafter.

**18. Warranty**

The Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor's employee (candidate) has made errors in completed work. Customer will immediately inform the Vendor of the Customer's determination. Vendor shall make corrections and revisions as necessary to provide the Customer with an acceptable Work Product without cost to Customer. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original work.

**19. 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. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**20. Captions**

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**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
  - ☐ Section 1 - Respondent and Requisition Information
  - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - ☐ Section 2 c. - Yes
  - ☐ Section 4 - Affirmation
  - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - ☐ Section 1 - Respondent and Requisition Information
  - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - ☐ Section 2 c. - No
  - ☐ Section 2 d. - Yes
  - ☐ Section 4 - Affirmation
  - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - ☐ Section 1 - Respondent and Requisition Information
  - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - ☐ Section 2 c. - No
  - ☐ Section 2 d. - No
  - ☐ Section 4 - Affirmation
  - ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment, including transportation and delivery), complete:**
  - ☒ Section 1 - Respondent and Requisition Information
  - ☒ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
  - ☒ Section 3 - Self Performing Justification
  - ☒ Section 4 - Affirmation

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



# HUB Subcontracting Plan (HSP)

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

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

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

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

## SECTION-1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Austin Ribbon & Computer Supplies, Inc. State of Texas VID #: 1742339797900  
Point of Contact: Ryan Grant Phone #: 512-452-0651  
E-mail Address: ryan.grant@arc-is.com Fax #: 512-452-0691
- b. Is your company a State of Texas certified HUB? ☒ - Yes ☐ - No
- c. Requisition #: DIR-TSO-TMP-242 Bid Open Date: 04/28/2016

(mm/dd/yyyy)

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-2: RESPONDENT's SUBCONTRACTING INTENTIONS**

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

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

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

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

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

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

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

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

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

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-2 RESPONDENT's SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-3 SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment, to include transportation and delivery.

Austin Ribbon & Computer Supplies, Inc. does not foresee the need to utilize subcontractors at this time. All services will be performed/fulfilled by ARC personnel.

If this changes in the future ARC will submit a new HUB Subcontracting Plan to DIR.

**SECTION-4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

signature on file

Signature

Ryan Grant

Printed Name

President

Title

4/25/2016Date  
(mm/dd/yyyy)**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.





# HSP Good Faith Effort - Method B (Attachment B)

Rev. 09/15

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc. Requisition #: DIR-TSO-TMP-242

**IMPORTANT:** If you responded "No" to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- ☐ - Yes (If Yes, continue to SECTION B-4.)
- ☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 09/15

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.

Requisition #: DIR-TSO-TMP-242

## SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

## SECTION: A PRIME CONTRACTOR'S INFORMATION

Company Name:	<u>Austin Ribbon &amp; Computer Supplies, Inc.</u>	State of Texas VID #:	<u>1742339797900</u>
Point-of-Contact:	<u>Ryan Grant</u>	Phone #:	<u>512-452-0651</u>
E-mail Address:	<u>ryan.grant@arc-is.com</u>	Fax #:	<u>512-452-0691</u>

## SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name:			
Point-of-Contact:		Phone #:	
Requisition #:	<u>DIR-TSO-TMP-242</u>	Bid Open Date:	<u>04/28/2016</u> (mm/dd/yyyy)

## SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).*

*(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

### 2. Subcontracting Opportunity Scope of Work:

### 3. Required Qualifications:

☐ - Not Applicable

### 4. Bonding/Insurance Requirements:

☐ - Not Applicable

### 5. Location to review plans/specifications:

☐ - Not Applicable

Vendor Name: GTS Technology Solutions, Inc.

Category	Title	Level	Pricing		
			Not-to-Exceed Rate (\$ per Hour)		
			Technology Type		
			Legacy	Core	Emerging
			NTE Rate	NTE Rate	NTE Rate
Applications	Programmer/ Developer Analyst	Developer Analyst 1	\$76.42	\$73.45	\$76.56
		Developer Analyst 2	\$81.63	\$85.98	\$96.52
		Developer Analyst 3	\$104.21	\$100.40	\$113.53
	Programmer/Developer	Developer 1	\$72.95	\$71.20	\$75.01
		Developer 2	\$86.84	\$83.75	\$94.26
		Developer 3	\$99.00	\$97.25	\$109.39
	Software Test Analyst	Software Test Analyst 1	\$60.79	\$65.28	\$71.39
		Software Test Analyst 2	\$65.88	\$71.07	\$82.57
		Software Test Analyst 3	\$76.46	\$81.99	\$96.43
	Technical Writer	Technical Writer 1	\$48.17	\$51.98	\$56.19
		Technical Writer 2	\$56.90	\$61.03	\$65.57
		Technical Writer 3	\$66.11	\$69.01	\$76.10
	Business Analyst	Business Analyst 1	\$64.68	\$70.15	\$76.40
		Business Analyst 2	\$85.10	\$87.06	\$90.01
		Business Analyst 3	\$105.94	\$105.94	\$106.02
	System Analyst	System Analyst 1	\$65.25	\$65.45	\$81.37
		System Analyst 2	\$75.77	\$87.03	\$95.50
		System Analyst 3	\$88.43	\$102.47	\$106.40
Data Management	Database Architect	Database Architect 1	\$79.58	\$76.68	\$83.38
		Database Architect 2	\$93.42	\$95.23	\$97.31
		Database Architect 3	\$121.58	\$130.26	\$130.26
	Data Warehouse Architect	Data Warehouse Architect 1	\$88.23	\$88.58	\$88.58
		Data Warehouse Architect 2	\$96.88	\$97.26	\$101.25
		Data Warehouse Architect 3	\$118.10	\$118.10	\$118.44
	Database Administrator	Database Administrator 1	\$78.16	\$80.16	\$86.63
		Database Administrator 2	\$83.04	\$93.61	\$101.54
		Database Administrator 3	\$102.47	\$116.37	\$118.72
Enterprise Architect	Enterprise Architect	Enterprise Architect 1	\$128.52	\$130.04	\$143.75
		Enterprise Architect 2	\$154.58	\$168.47	\$167.51
Project Management	Project Manager	Project Manager 1	\$84.93	\$96.73	\$105.63
		Project Manager 2	\$103.67	\$116.33	\$125.20
	Project Lead	Project Lead 1	\$80.84	\$87.16	\$94.07
		Project Lead 2	\$95.42	\$108.37	\$116.95
Telecom/Networking	Network Engineer	Network Engineer 1	\$77.02	\$88.58	\$99.07
		Network Engineer 2	\$94.21	\$113.31	\$123.18
	Network Administrator	Network Administrator 1	\$55.97	\$57.67	\$65.73
		Network Administrator 2	\$65.75	\$76.42	\$87.15
		Network Administrator 3	\$62.82	\$82.15	\$90.78
Security	Security Analyst	Security Analyst 1	\$88.66	\$99.99	\$111.48
		Security Analyst 2	\$100.51	\$113.22	\$126.76
	Security Engineer	Security Engineer	\$105.78	\$119.46	\$135.03
	Security Architect	Security Architect	\$128.25	\$161.97	\$161.97
Customer Technical Support	Help Desk	Help Desk 1	\$39.95	\$42.98	\$47.11
		Help Desk 2	\$47.00	\$53.12	\$55.08
		Help Desk 3	\$54.92	\$58.60	\$63.58
	Technical Support	Technical Support 1	\$46.13	\$42.00	\$57.23
		Technical Support 2	\$56.73	\$58.71	\$66.58
		Technical Support 3	\$63.20	\$67.80	\$76.38
Information Technology Service Management (ITSM Operations)	Organizational Change Management/OCM Analyst	OCM Analyst 1	\$90.31	\$90.31	\$90.31
		OCM Analyst 2	\$119.84	\$119.84	\$119.84
IT Marketing	Information Technology Communication Coordinators	IT Communications Coordinator 1	\$57.31	\$57.31	\$57.31
		IT Communications Coordinator 2	\$81.63	\$81.63	\$81.63
Information Technology Training	IT End Users Trainer	End User Trainer 1	\$76.42	\$76.42	\$76.42
		End User Trainer 2	\$100.73	\$100.73	\$100.73
Information Technology Contract Management	IT Contract Manager	IT Contract Manager 1	\$97.26	\$97.26	\$97.26
		IT Contract Manager 2	\$118.10	\$118.10	\$118.10

City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Discussion and possible recommendation to approve an ERP Project Lead/Enterprise Architect to assist with the Workday implementation utilizing the Texas Department of Information Resources (DIR) Information Technology Staff Augmentation Contract (ITSAC) with GTS Technology Solutions in the amount of \$415,200. --Leigh Wallace, Finance Director

**ITEM SUMMARY:**

The Workday project team is now 6 months into the 24 month implementation project. During Phase I HR/Payroll, the team has struggled to adequately staff both the project and the regular department duties of HR, Finance and IT. The team is requesting this additional one-time implementation assistance to alleviate overlapping project workload and increase Workday specific experience.

The City of Georgetown, following the Texas Department of Information Resources Best Value IT Staff Services Process has identified an Enterprise Resource Planning (ERP) Project Lead/Enterprise Architect that meets the needs of the City to assist with expert level Workday experience and support for implementation of the Workday system. The staffing services will be utilized for a 16 month engagement.

Candidate resumes for the ERP Project Lead/Enterprise Architect role were submitted from GTS that has a contract with DIR. After reviewing the application and reference checks an interview was scheduled with Finance and IT team members. After the interview performed, the selection team met to discuss the candidate. After discussion, the team unanimously agreed that this candidate is an excellent fit for our immediate needs.

The staffing services will be procured through GTS Technology Solutions utilizing Texas DIR contract DIR-TSO-3504.

**FINANCIAL IMPACT:**

Total cost of the staffing services for 16 months is estimated at \$415,200. This estimate is provided based on a maximum 2,768 hours. Actual working time will exclude city holidays. Hours worked will be reported and monitored on a weekly basis and approved by the City's Finance Director before they can be billed.

Funding is available through the remainder of Fiscal Year 2019 (May – Sept) by reallocating existing resources such as project contingency, vacancy savings in Finance, and excess IT fund balance. Funding in FY2020 for the remainder of the contract is dependent upon Council approval of a budget request to issue additional CO debt for these one-time implementation costs.

**SUBMITTED BY:**

Leigh Wallace, Finance Director

**ATTACHMENTS:**

Description	Type
 Kirkland Bowie Resume	Backup Material



Quote

Backup Material



DIR Contract

Backup Material

# Kirklin W. Bowie

[kwbowie@ridgecrest-us.com](mailto:kwbowie@ridgecrest-us.com)

(404) 964-8316

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## QUALIFICATIONS SUMMARY

Over twenty-three years of progressive, comprehensive knowledge in financial software implementation, project management, financial analysis, organizational management, employee training and cost containment.

## SOFTWARE / APPLICATION EXPERIENCE

Enterprise Resource Planning (ERP) Application knowledge:

- PeopleSoft Financials
- Microsoft Dynamics ERP
- Concur Travel & Expense
- Kronos Time & Attendance

Database & Reporting Applications:

- Microsoft SQL Server
- Microsoft SharePoint
- Microsoft SQL Server Reporting Services
- Crystal Reports

## PROFESSIONAL SERVICE DELIVERY EXPERIENCE

Successfully managed and implemented over **20 major** Tier 1 and Mid-market ERP projects.

## PROFESSIONAL EXPERIENCE

### **Ciner Resources**

**2018 - Present**

*Integration Consulting Manager*

*...Microsoft Dynamics 365 ERP Integration with Bourque & Toolworx using Dell Boomi middleware (GL, Inventory, Sales, SCM)*

- Plan, coordinate, and supervise all activities related to the integration of Dynamics 365 and Bourque Logistics software applications.
- Collaborated with technology team members, end users, and other stakeholders in the testing of Bourque Logistics integrations.
- Ensured that the new integration between Bourque and Dynamics 365 met functional requirements, system compliance, and other specifications.

### **Ridgecrest Solutions, LLC**

**2008 - Present**

*Project Manager / Principal Consultant / Managing Director*

*...Microsoft Dynamics GP ERP Implementation and Maintenance (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)*

- Microsoft Dynamics GP Enterprise Resource Planning (ERP) implementation projects through entire life cycle using proven methodologies.
- Lead client and implementation teams through series of discussions and exercises to build requirements for new Chart of Accounts.
- Analyzed Organization Structure and business model to facilitate efficient financial reporting frameworks.
- Successful Dynamics GP upgrades
- Coordination of Custom Development activities to support conversion efforts (Development tools including SQL, .Net, and MS Access)
- Develop project plan, assess risk, develop work plan, schedule resources, supervise and review consultants work.
- Develop full and detailed documentation of all system configuration and process flow changes.
- Evaluate and redesign business processes to achieve operational efficiencies to maximize software investment.
- Map system business requirements to software functionality.
- Develop and document functional specifications for integrating ERP system to other applications (ecommerce sites, sales systems, inventory systems, etc.) and custom software.
- Build and maintain client relationship to ensure satisfaction and generate additional revenue

### **Wake Forest Baptist Medical Center (Winston Salem, NC)**

**9/2017 - Present**

*Project Manager Consultant -ERP*

*...Concur Travel & Expense Implementation*

*...Oracle Cloud ERP Business Assessment & Planning Implementation (GL, AP, AR, FA, Cash, PPM, SCM)*

- Managed the implementation of Concur Time and Expense
- Managed the Business Assessment and Planning Phases of the Oracle Cloud implementation before the project was placed on hold.
- Management of client and contractor Resources; Management of Finance & Supply Chain Tower
- Execute established work plan, schedule resources, supervise and review consultants work.
- Management and escalation of risks and issues
- Create and manage project collateral on Project SharePoint site



**AMITA Healthcare (Bolingbrook, IL)****2016-2017***Project Manager Consultant -Finance**...PeopleSoft 9.1 ERP Implementation (GL, AP, AR, FA, Cash, Inventory, Purchasing)*

- Created deployment strategy that reduced weekend deployment from 6 hours to 2 hours.
- Manage PeopleSoft Enterprise Resource Planning (ERP) implementation projects through entire life cycle using proven methodologies.
- Management of client and contractor Resources; Management of Finance Tower deliverables ensuring product development and implementation/production phases meet quality assurance standards.
- Coordination of Custom Migration activities to support conversion efforts (Development tools including SQL, .Net, and MS Access)
- Develop full and detailed documentation of all system configuration and process flow changes.
- Map system business requirements to software functionality.
- Gathered reporting and reconciliation requirements from functional team members.
- Created, maintained and executed plans and task for mock deployments.

**Regional Medical Center via Leidos Healthcare (Orangeburg, SC)****2014-2016***Project Manager Consultant -Finance**... PeopleSoft 9.2 ERP Implementation (GL, AP, AR, Cash, FA, Inventory, Purchasing)**...Kronos Time & Attendance Upgrade*

- Created Request for Proposal and assisted in the implementation vendor selection process.
- Created, maintained and executed Reports, Interfaces, Conversions and Extensions (RICE) documentation.
- 2,000 users, \$10M budget
- Migration from Oracle EBS to Oracle PeopleSoft implementation of Financials, HR, PY and Supply Chain. Financials Project Manager, responsible for management of all Financials related project task and management of the overall project budget. Direct report to the Program Manager and Executive Sponsors.
- Facilitated and documented business requirements sessions.
- Performed business process reengineering, as-is/to-be modeling, functional mapping and gap analysis.
- Mapped system business requirements to software functionality to determine project scope and timeline.

**Cox Media Group (Atlanta, GA)****2014-2015***Senior Consultant**...Microsoft Dynamics GP ERP Implementation and Maintenance (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)*

- Provide ad-hoc support to finance users and help-desk staff
- Developed SQL scripts to increase efficiency in multiple department changes and routing in ReqLogic
- Implementation, test and roll-out of additional GP Check books
- Aid and guidance with reconciling cash using GP Cash Management, Payables Management, General Ledger and Blackline processes.
- Created customs SQL views and SmartList to assist in the overall reconciliation process

**Ascension Healthcare-Seton Family of Hospitals (Austin, TX)****2012-2014****Ascension Healthcare-Providence Healthcare (Waco, TX)***Project Manager Consultant -Finance**...PeopleSoft 9.1 ERP Implementation (GL, AP, FA, Cash, Inventory, Purchasing)*

- Manage PeopleSoft Enterprise Resource Planning (ERP) implementation projects through entire life cycle using proven methodologies.
- Management of client and contractor Resources; Management of Finance Tower deliverables ensuring product development and implementation/production phases meet quality assurance standards.
- Coordination of Custom Development activities to support conversion efforts (Development tools including SQL, .Net, and MS Access)
- Execute established work plan, schedule resources, supervise and review consultants work.
- Develop full and detailed documentation of all system configuration and process flow changes.
- Evaluate and redesign business processes to achieve operational efficiencies to maximize software investment.
- Map system business requirements to software functionality.
- Created, maintained and executed plans and task for mock deployments.
- Created deployment strategy that reduced weekend deployment from 16 hours to 4 hours.

**Cox Media Group (Atlanta, GA)****2010 – 2012***Senior Consultant**...Microsoft Dynamics GP ERP Implementation and Maintenance (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)*

- Implementation of Purchasing, Payables Multi-Entity Management for the Purchase to Pay Service Center startup.
- Provided best practice configuration and process suggestions to support efficiency gains in the service center.
- Provided process and application training for the service center team members.
- Provide ad-hoc support to finance users and help-desk staff
- Implementation, test and roll-out of additional Purchasing processes
- Development, test and roll-out of custom SmartList Builder views and lists.
- Map system business requirements to software functionality.

**BCG Systems, Inc (Atlanta, GA)****2007-2008***Practice Manager**... Microsoft Dynamics ERP Implementations (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)*

- Participated in firm marketing and promotional activities including trade shows, seminars, writing articles and one on one client meetings and demonstrations. Exceeded personal hours charge goals.
- Insured that assigned staff is billable and efficient in the performance of their work.
- Worked with the partner and other managers on coordination of staff schedules and new clients to ensure that staff is used to the best of their abilities.
- Identified new opportunities for services within existing clients being serviced and marketed complimentary services to clients as needed.
- Performed billing and collections responsibilities for clients as assigned by the partner.
- Actively engaged in the development and maintenance of the standard procedures and checklists.
- Met regularly with the partner to discuss status of clients, projects, workload, and staff.
- Mentored staff and provided consistent feedback to staff regarding their performance, both positive and negative.

**I.B.I.S., Inc. (Atlanta, GA)****2006-2007***Managing Consultant**...Microsoft Dynamics GP ERP Implementations (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)*

- Assist the Director of Implementation in all aspects of his job as his number one direct report. Fills in for Director in his absence.
- Oversees and manages the planning, design, and implementation of multiple consulting projects by interacting with customers and vendors to identify and deliver cross platform solutions.
- Translates functional business objectives and critical success factors into actionable business, organization, and information strategies.
- Assists I.B.I.S. Inc. consulting group in evaluating the customer's environment and business issues, and develops models to provide effective solutions.
- Serves as the primary interface between the company, customer, and third party providers in the delivery of enterprise-wide solutions.
- Provides the highest technical and leadership expertise in a range of focus technologies and Microsoft Business Solutions industry solutions. Designs, develops and manages total systems solutions, including the identification and delivery of effective departmental and enterprise-wide business, organization, and information technology strategies.

**ePartners, Inc. (Atlanta, GA)****2004-2006***Engagement Manager**...Microsoft Dynamics GP ERP Implementations (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)**City of New Orleans Implementation Project Manager (August 2004 – August 2005)*

- Establish, nurture and maintain relationships with key regional customers.
- Establish, nurture and maintain relationships with publisher partners.
- Identified and coordinated the delivery of service and additional product opportunities with current clients.
- Negotiate rate increase with long-term customers.
- Ensure projects are managed in accordance with internal PMO methodologies and PMI project management process standards.

**ePartners, Inc. (Atlanta, GA)****2001-2003***Back Office Practice Manager**...Microsoft Dynamics GP ERP Implementations (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)*

- Maintained an average group utilization of 80% with overall revenue to total compensation ratio of 2.5.
- Maintained project, training, and vacation schedules of Back Office staff.
- Managed staff development by implementing best practices of hiring, goal setting and reviews.
- Ensured the proper alignment of projects and resources through continued development back office skill sets.
- Manage Microsoft Dynamics implementation projects through entire life cycle using proven methodologies.

**ePartners, Inc. (Atlanta, GA)****2000-2001***Project Manager**...Microsoft Dynamics GP ERP Implementations (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)*

- Manage Microsoft Dynamics implementation projects through entire life cycle using proven methodologies.
- Develop project plan, assess risk, develop work plan, schedule resources, supervise and review consultants work.
- Develop full and detailed documentation of all system configuration and process flow changes.
- Mentor consultants by providing technical and process assistance as well as guidance on best practices for maintaining Great Plains and interacting with end-users.
- Evaluate and redesign business processes to achieve operational efficiencies to maximize Great Plains investment.
- Map system business requirements to Great Plains functionality.
- Develop and document functional specifications for integrating Great Plains to other applications (ecommerce sites, sales systems, inventory systems, etc.) and custom software.
- Build and maintain client relationship to ensure satisfaction and generate additional revenue.

**ePartners, Inc. (Atlanta, GA)****1998-1999***Senior Applications Consultant**...Microsoft Dynamics GP ERP Implementations (GL, AP, AR, FA, Cash, Inventory, Sales, Purchasing)*

- Perform needs analysis of client systems to determine fits and/or gaps with Great Plains Dynamics Enterprise Accounting.
- Perform business process analysis to determine best practices and key methods of improvement.
- Design and enhance multi-company general ledger account format.
- Converted client data from various legacy accounting data formats to Great Plains Dynamics format.
- Integrated Great Plains Dynamics with various business applications to meet complex needs of clients.
- Conducted training sessions of all Great Plains Dynamics modules, both classroom and one on one sessions.
- Troubleshoot and solve various software problems at client sites.
- Perform database maintenance in both Btrieve and MS SQL databases.
- Managed the implementation of Great Plains Dynamics C/S+ on MS SQL database engine.

**Akzo Nobel Industrial Fibers, Inc. (Scottsboro, AL)****1995-1998***Assistant Controller**...Microsoft Dynamics GP ERP Implementation (GL, AR, FA, Sales, Inventory)*

- Controller for Nylon manufacturing team, preparing proactive and present cost / benefit analysis, sensitivity calculations and financial information to support team decisions.
- Developed and maintained cost prices for all Nylon products.
- Analyze changes in raw materials and manufacturing methods to determine the effects on costs of the Nylon product.
- Analyze actual manufacturing costs and prepare periodic report comparing standard costs to actual production costs.
- Proper coding of raw materials invoices and monitoring purchase price variances.
- Created Sales Margins reporting system utilizing MS Access with SQL and ODBC links.
- Responsible for Billing, Accounts Receivable, and Credit functions.
- Improved Accounts Receivable DSO from greater than 65 days to within company standard of less than 55 days.
- Implemented Great Plains Dynamics, integrated with Inventory transactions on the AS400 to reduce Billing tasks by 30 percent.
- Complete month end closing procedures within 4 working days

**KW Bowie Accounting & Information Services (Baker, LA)****1993-1995***Accountant / Consultant*

...(Clients include: a real estate broker, pest control company, federal grant administrator and environmental service firm.)

- Designed and maintained computerized profit and non-profit accounting systems.
- Prepare and process automated payrolls; Prepare and file all W-2s and 1099s.
- Train clients on various accounting procedures and personal computer operations.
- Prepare monthly and annual financial statements.
- Developed a database management system to track customer environmental waste movement.

**Church Point Ministries, Inc. (Baton Rouge, LA)****1989-1993***Accountant / Systems Analyst*

- Responsible for entire accounting function for parent and four subsidiaries.
- Reconciled general ledger accounts
- Prepared annual budgets and financial statements.
- Analyze all hardware & peripheral problems; Maintain and update all software;
- Implemented Northon Telecom system for over 75 users.
- Project manager for various special events held at the ministry.
- Train and instruct staff on the effective use of various business software applications.
- Developed a database management system to track donor giving and family profiles.

**EDUCATION**

Southern University – Baton Rouge, Louisiana  
 Bachelor of Science in Accounting, 1990

**CERTIFICATION**

Project Management Institute  
 Project Management Professional (PMP), July 2004 – August 2009



TECHNOLOGY SOLUTIONS

9211 Waterford Centre Blvd, Suite 125  
Austin, TX 78758

3/20/2019  
Greg Berglund

**GTS DIR#-TSO-3504**

Re: Quote for Kirklin Bowie  
Enterprise Architect 2 Core  
\$150.00 per hour  
2768 hours  
Total.....\$415,200.00

Thank you,

**JENNY KERTSOS**

*Account Executive, Staffing*

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**P** 540.847.2996   **F** 512.452.0691  
jenny.kertsos@gts-ts.com



## Scope of Services

Pursuant to the DIR-TSO-3504, GTS shall provide Kirkland Bowie as Enterprise Architect 2 Core at the rate and rank as provided above for City of Georgetown's implementation of the Workday ERP System (the "Project"). The Enterprise Architect will be on-site at the City for 16 months. Kirkland Bowie, or any candidate provided as a replacement pursuant to the terms of DIR-TSO-3504, must have the following skills and perform the following services:

The Enterprise Architect will analyze requirements during the City of Georgetown's Workday ERP system implementation and design service solutions to meet those objectives. In this role, the Enterprise Architect will utilize his expertise of Workday processes to construct risk assessments and corresponding remediation plans. The Enterprise Architect will use departmental automation tools as available, to craft detailed and accurate deliverables that specify processes, technology, staffing, and project management involved in proposed services solutions.

- Finance GL Subject Matter Expert and key decision maker
- Accountable for the development and delivery of all Financial deliverables
- Accountable for the development and implementation of Finance policies and procedures
- Jointly accountable for the development and implementation of AP/Payroll/Time & Attendance policies and procedures with HR Lead
- Identifies and communicates business requirements
- Key decision maker: responsible for data mapping, sign off on design, configuration and testing
- Develops and maintains documentation
- Supports change control process and reviews
- Works with Procurement Lead to define and manage policies and procedures related to Customers and Suppliers
- Responsible for assuring that data content, mapping, and crosswalks requirements are incorporated into the data environment and has maintenance of business support
- Oversees and supports data grooming, working with data owners to support business requirements
- Assists with scheduling, project plan maintenance, and communications
- Workday, Oracle Fusion, and PeopleSoft ERP experience
- Knowledge of integration technologies and how they work (Web services and API's)
- In depth technical and functional knowledge of Workday system configuration
- Provide a "trusted expert advisor" role as a Subject Matter Expert for technical services, to both internal and external customers, ranging from formal advice to internal and external customer presentations
- Demonstrated strong written and oral communication skills, and presentation skills
- Ability to work effectively with business and technology
- Excellent analytical, problem solving, and multi-tasking skills
- Evaluate multiple potential solutions and provide recommendations
- Ability to work independently and multi-task effectively

The Enterprise Architect will represent the interest of the City of Georgetown and be responsible for working with the implementation team.

Vendor Contract No. \_\_\_\_\_

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES**

**ARC GOVERNMENT SOLUTIONS, INC.**

1. DIR acknowledges the name change of this contract to ARC Government Solutions, Inc. from Austin Ribbon & Computer Supplies, Inc., effective as of the last date of signature; DIR shall change the contract documents hereafter to ARC Government Solutions, Inc.
2. ARC Government Solutions, Inc. hereby represents to DIR that it owns the Contract and agrees to perform all duties and obligations to be performed by Vendor. ARC Government Solutions, Inc. hereby represents to DIR that by the effective date of this Contract that it is registered as a Texas Vendor, with all necessary Texas taxpayer identification numbers with the Comptroller of Public Accounts and be in good standing with that office, and otherwise be authorized to do business with the State of Texas.

**3. Introduction**

**A. Parties**

This Contract for Services ("Contract") is entered into between the State of Texas ("State"), acting by and through the Department of Information Resources ("DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and ARC Government Solutions, Inc. ("Vendor"), with its principal place of business at 9211 Waterford Centre Blvd., Ste. 202, Austin, TX 78758.

**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-242, on March 29, 2016, for Information Technology Staffing Augmentation Contracts. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-242 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Information Technology Staff Augmentation Contracts (ITSAC); Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Services and Pricing Index; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-242, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-242, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1 and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

Vendor Contract No. \_\_\_\_\_

**4. 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, DIR may extend this Contract, by amendment, for up to two (2) optional one-year terms. If there are no sales at the end of the initial term, this Contract will not be extended. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional renewal terms.

**5. Service Offerings**

Services available under this contract are limited to information technology staff augmentation services as specified in Appendix C, Services and Pricing Index.

**6. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

**7. 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 one percent (1.00 %). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000.00 shall be \$1,000.00.

**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 by Vendor in the price to the Customer.

**8. Notification**

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

If sent to the State:

Shannon Kelley, CTPM, CTCM  
Manager, Enterprise Contract Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 463-7666  
Facsimile: (512) 475-4759  
Email: [Shannon.Kelley@dir.texas.gov](mailto:Shannon.Kelley@dir.texas.gov)

If sent to the Vendor:

Ryan Grant  
Austin Ribbon and Computer Supplies, Inc.  
9211 Waterford Centre Blvd., Ste. 202  
Austin, TX 78758  
Phone: (512) 452-0651  
Facsimile: (512) 452-0691  
Email: [ryan.grant@arc-is.com](mailto:ryan.grant@arc-is.com)



Vendor Contract No. \_\_\_\_\_

**9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Information Technology Staff Augmentation Services (ITSAC).**

No exceptions have been agreed to by DIR and Vendor.

Remainder of page intentionally left blank

Vendor Contract No. \_\_\_\_\_

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

**ARC GOVERNMENT SOLUTIONS, INC.**

**Authorized By:** signature on file

**Name:** Ryan Grant

**Title:** President

**Date:** 7/21/2016

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

**Authorized By:** signature on file

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 7/28/2016

**Office of General Counsel:** DB 7/28/2016

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR  
INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES (ITSAC)**

**GTS TECHNOLOGY SOLUTIONS, INC.**

**formerly**

**ARC GOVERNMENT SOLUTIONS, INC.**

1. DIR acknowledges the name change to GTS Technology Solutions, Inc. from ARC Government Solutions, Inc. with its principal place of business at 9211 Waterford Centre Blvd, Suite 202, Austin, TX 78758. Effective date of change is September 26, 2016. DIR agrees to change all contract files to the new name.
2. GTS Technology Solutions, Inc. hereby agrees to perform all duties and obligations to be performed by Vendor under Contract DIR-TSO-3504 to the same extent as if it had been an original party thereto.
3. GTS Technology Solutions, Inc. also represents that 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 §231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate.
4. GTS Technology Solutions, Inc. hereby represents it is authorized to do business in the State of Texas and is in good standing with the Comptroller of Public Accounts.

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

Remainder of page intentionally left blank

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

**GTS TECHNOLOGY SOLUTIONS, INC.**

**Authorized By:** signature on file

**Name:** Ryan Grant

**Title:** President

**Date:** 10/21/2016

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

**Authorized By:** signature on file

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 10/27/2016

**Office of General Counsel:** DB 10/25/2016

**Amendment Number 2**  
**to**  
**Contract Number DIR-TSO-3504**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**GTS Technology Solutions, Inc.**

This Amendment Number 2 to Contract Number DIR-TSO-3504 ("Contract") is between the Department of Information Resources ("DIR") and GTS Technology Solutions, Inc. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. Contract, Section 2. Term of Contract, is amended by the addition of the following:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through July 28, 2019, or until terminated pursuant to the termination clauses contained in the Contract. The contract will renew automatically in one-year increments for one (1) additional year under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. Contract, Section 6. Notification is hereby amended as follows: All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:  
Kelly A. 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

3. Appendix A. Standard Terms and Conditions For Product and Related Services Contracts dated 03/22/2016, is here by restated in its entirety and replaced with the attached Appendix A. Standard Terms and Conditions For Information Technology Staffing Augmentation Contracts (ITSAC) dated 09/29/2017.

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

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 7/28/2018.

**GTS Technology Solutions, Inc.**

**Authorized By:** Signature on File

**Name:** Ryan Grant

**Title:** President

**Date:** 7/10/2018

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

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 7/16/2018

**Office of General Counsel:** DB 7/11/2018

**Appendix A Standard Terms and Conditions for  
INFORMATION TECHNOLOGY STAFF AUGMENTATION CONTRACT  
(ITSAC)**

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**Appendix A Standard Terms and Conditions for  
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**Appendix A Standard Terms and Conditions for  
INFORMATION TECHNOLOGY STAFF AUGMENTATION CONTRACT  
(ITSAC)**

**1. No Quantity Guarantees**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The Contract is not exclusive to the Vendor. Customers may obtain 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 services will be procured through the Contract.

**2. 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, 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.

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- 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. 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. 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).
- G. State** – refers to the State of Texas.
- H. DIR** – refers to the Department of Information Resources.
- I. Acceptable Candidate** – refers to a candidate that meets the stated requirements pursuant to a Work Order Solicitation and is correctly identified and priced using the ITSAC Category Pricing as defined in Exhibit B.
- J. Active Vendor** – refers to Vendors that are given access to opportunities presented through Work Order Solicitations.
- K. Best Value Selection** – refers to Work Order Solicitation selections made by Customers that do not follow the competitive posting and review process. The Customer informs DIR of the intent to select a Worker and submits the appropriate procurement documentation required for the selection. Customer will determine the criteria for Best Value Selection and whether or not to use this procurement.
- L. Evaluation Period** – refers to the three-calendar month period that coincides with the State fiscal calendar. The evaluation periods are September 1, to November 30; December 1 through February 28; March 1 to May 31 and June 1 through August 31st.
- M. Evaluation Status** – refers to the evaluation that is provided quarterly. It is one of two values: Acceptable or Unacceptable. Vendor shall be evaluated on its performance relative to the performance of other Vendors in the same grouping.
- N. Hourly Rate** – refers to the rate that is charged by the Vendor and paid by the Customer for services rendered by Worker(s) under this contract. It is calculated and communicated in terms of dollars per hour.
- O. Interviewed Candidate** – refers to an Acceptable Candidate that was interviewed by the Customer pursuant to a Work Order Solicitation.
- P. Invoice** – refers to a Customer approved instrument submitted by Vendor for payment of services.
- Q. ITSAC** – refers to the IT Staff Augmentation Contract document executed between DIR and Vendor.
- R. Not to Exceed (NTE)** – refers to the maximum hourly rate for which a Vendor has agreed to provide Worker(s). By this contract, Vendor can provide Worker(s) at a lower hourly rate, but not a higher hourly rate.
- S. Opportunity Response Time** – refers to the time within which a Vendor is expected to respond to a Work Order Solicitation with the appropriate resume(s). The metric used for expected opportunity response time is as established by the Customer.
- T. Placed Candidate** – refers to an Interviewed Candidate that was selected by the Customer pursuant to a Work Order Solicitation.
- U. Purchase Order** – refers to 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).

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- V. Rate Schedule** – refers to the set of competitive, market driven, standardized rates that will document the NTE hourly rates for ITSAC Workers.
- W. TPASS** – refers to the Texas Procurement and Support Services Division of the Comptroller of Public Accounts (CPA).
- X. Vendor** – refers to awarded Information Technology Staff Augmentation Contract (ITSAC) Vendor.
- Y. Worker(s)** – refers to identified individual(s) who perform authorized services under the supervision of Vendor for DIR Customers and who are employees and/or subcontractors of the Vendor.
- Z. Work Order Solicitation** – refers to a document submitted to Vendor by DIR outlining the description of services to be performed for a specified DIR Customer. Work Order Solicitation will include: Number of Workers, Worker skills and qualifications required by the DIR Customer, the number of hours to be worked, duration of engagement with the DIR Customer, authorized travel, and other relevant information. The term also includes Best Value Selections made by Customers, in which the Customer defines Best Value Selection and informs DIR of the intent to select a Worker and submits the appropriate procurement documentation required for the selection.

**3. 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 Vendor 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 Vendor.

**C. Invalid Term or Condition**

- 1)** To the extent any term or condition in the Contract conflicts with the applicable Texas

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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 do not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

**2)** If one or more term or condition 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 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 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 two 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,

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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.

**4. 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.

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**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



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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.

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**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.

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**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.

**5. Terms and Conditions Applicable to State Agency Purchases Only**

**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 of Texas 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 thirty (30) 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 of Texas 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 5.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

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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 5.B.

**6. 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 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 services available under the Contract shall be processed through the Contract.

**B. Internet Access to Contract and Pricing Information**

**1) Vendor Webpage**

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

- a) the services awarded and services description;
- b) contact information (name, telephone number and email address) for Vendor;
- c) instructions for obtaining quotes and placing Purchase Orders;
- d) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- e) a link to the DIR "Cooperative Contracts" webpage for ITSAC Contracts; and
- f) 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

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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 website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

**4) Webpage Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to 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 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.

**C. Services Warranty and Return Policies**

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

**D. DIR Logo**

Vendor 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 Vendor logo, (iii) the DIR logo is only used to communicate the availability of services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

**E. Vendor Logo**

If DIR receives the Vendor's prior written approval, DIR may use the Vendor's name and logo in the promotion of the Contract to communicate the availability of services under the

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Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor'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 trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

**F. Trade Show Participation**

At DIR's discretion, Vendor 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 expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor 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 booth.

**G. Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Vendor will be required to attend an orientation meeting to discuss the content and procedures of the Contract to included 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 for attendance at the meeting.

**H. 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.

**I. 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 service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services.

**7. Purchase Orders, Invoices, and Payments**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A-E.**

**A. Purchase Orders**

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

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**B. Invoices**

Invoices shall be submitted by the Vendor directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to the Vendor.

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 services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

The administrative fee specified in Section 5.A., DIR Administrative Fee, of the contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**C. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) 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.

**D. Tax-Exempt**

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

**E. Travel Expense Reimbursement**

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

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**8. Contract Administration**

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

**A. Contract Administrators**

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators 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) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of pricing and 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 Vendor and a Customer, and iii) advising DIR of Vendor's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager the assigned Contract Manager is not, in the 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 services purchased under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books. 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 (15<sup>th</sup>) calendar day of the month following the month of the sale. If the 15<sup>th</sup> calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, 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



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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.

If Vendor submits three (3) monthly sales reports or cost recovery fee payments late within a 12-month period beginning upon execution of this Contract, DIR reserves the right to suspend or terminate this Contract for cause per Section 10.B.4.a. of Appendix A, Termination for Cause. If Vendor is late with its monthly sales report, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly report is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly sales reports. If Vendor is late with its monthly administrative fee payment, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly administrative fee payment is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly administrative fee payments. DIR does not waive any other contractual remedy pursuant to this Contract.

**3) Historically Underutilized Businesses Subcontract Reports**

- a) Vendor shall electronically provide each Customer with their 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

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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 administrative 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 at DIR's expense.

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

**C. Records and Audit**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH 1).**

**1)** Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, 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 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 and the requirement to cooperate is included in any subcontract 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 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: Customer name, invoice date, invoice number, description, quantity, 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

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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) 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 Vendor 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**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

**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.

**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.

**9. 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 SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR 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

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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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) 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. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES

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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, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS 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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.**

**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)*

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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) 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;
- (xii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiv) under Section 2155.006 and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvi) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xvii) 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.

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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, 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 Fulfillers 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 Organization 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.

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**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 Certification Statement of Exhibit A of the RFO and/or Section 9.C. (xii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

**H. Confidentiality**

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

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

Vendor and/or Order Fulfiller may, from time to time during the performance of the 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 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 shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

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

Prior to commencement of any services, background and/or criminal history investigation of the Vendor'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 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.



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**K. Limitation of Liability**

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

**L. Overcharges**

**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

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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 \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. 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 PER ACCIDENT, \$1,000,000 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;
- 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 of Texas 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 of Texas 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

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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 Managed Services Products and/or Services**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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

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

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

**W. Vendor Reporting Responsibilities**

**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 83<sup>rd</sup> Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

**10. Contract Enforcement**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 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.

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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 §20.1115) 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 services, they are obligated to pay for the services or they may 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

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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 19.A, Notices, of intent to terminate.

**3) Termination for Convenience**

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

**4) Termination for Cause**

**a) Contract**

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

**b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. 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 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

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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 Vendor 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 Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

**11. Statement of Services to Be Performed**

- A.** Vendor shall provide Worker(s) to DIR Customers to perform services that are defined in the Work Order Solicitation, in accordance with the terms and conditions of the Contract. Workers provided by Vendor shall possess qualifications that meet or exceed those specified in the Work Order Solicitation and will perform the functions as outlined in the Work Order Solicitation at the rates quoted therein. All travel is subject to the prior, written approval of the Customer.
- B.** Vendor understands that this is a non-exclusive, indefinite quantity contract. DIR makes no representations or warranties that Vendor shall receive any number or volume of Work Order Solicitations hereunder.

**12. Work Order Solicitation / Purchase Order Issuance**

- A.** In order to be awarded a Purchase Order hereunder, except for Best Value Selection, Vendors will respond to Work Order Solicitation(s) for services as issued by DIR on behalf of its



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Customers, consistent with the Terms and Conditions of this Contract. Vendor understands that no work under any Purchase Order issued by Customer shall commence until receipt of Purchase Order. Vendor will perform in accordance with the terms and conditions of the Customer Purchase Order.

- B.** Customer specifications may include pre-selection requirements that potential Vendors (and their Worker) submit to and satisfy criminal background checks as authorized by Texas law.
- C.** Vendors cannot submit resumes outside of the process for competitive solicitations. (except when customer is using best value).
- D.** Vendor shall direct all communications concerning this Contract and any Work Order Solicitation(s) to DIR except for Customer initiated communications, the interview, the hiring process and Best Value Selections.
- E.** Vendor is prohibited from submitting a substitute candidate during the interview process if the original candidate is no longer available. Vendor may offer a replacement candidate, if the Purchase Order (PO) has been issued and the original candidate is no longer available.
- F.** Duplicate submissions of a candidate will be disqualified, if one or more Vendors submit the same candidate for the same competitive solicitation.
- G.** Together with each resume submitted, Vendor must submit a Right to Represent, signed by the proposed Worker, authorizing the Vendor to submit Worker's resume for that Work Order Solicitation. If Multiple Vendor's submit resumes and a Right to Represent for the same Worker for a given Work Order Solicitation, then that worker will be disqualified from consideration for the Work Order Solicitation.
- H.** DIR will not promulgate a standard candidate resume format/layout. Awarded Vendor may submit candidate resumes in desired company format/layout. DIR will require Vendor to submit the approve DIR cover sheet with the candidate resume.
- I.** Best Value Selections. Customer shall select the candidate and provide DIR with the appropriate procurement documentation to support the selection.

**13. Hourly Rates**

- A.** The Vendor shall quote hourly bill rates to DIR in response to Work Order Solicitation(s) provided by DIR on behalf of its Customer during the term of this Contract. Hourly bill rates shall not exceed awarded NTE bill rates in this Contract. Hourly rates quoted in a particular Purchase Order shall remain valid for a period of time specified in the Purchase Order. Vendor shall not increase its rates under any Purchase Order, including amendments/Purchase Order Change Notice (POCN) thereto, without the express prior written approval of Customer. In the event, that the Vendor submits an hourly bill rate that exceeds the NTE bill rate in the contract, the candidate will be submitted to the customer with an hourly bill rate that is reduced to the NTE hourly bill rate in the contract.



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- B. All quoted hourly bill rates shall include all expenses associated with each candidate, including wages, benefits, DIR Cost Recovery Fee, usual living expenses and costs of commuting to and from the Customer's primary work site designated. Travel reimbursement may be allowed. See Appendix A Terms and Conditions Section 6. C. Payments and Contract Section 4. F. Travel Expense Reimbursement.
- C. Payment of work over 40 hours will be at the hourly rate quoted and must be coordinated and pre-approved through the customer.

**14. Vendor Suspension**

DIR's Right to Suspend Contract for Cause in accordance with this Section. DIR may suspend Vendor's performance of this Contract, in whole or in part, for a period up to 180 calendar days by following the procedure in this paragraph. When a violation of the contract as set forth below occurs, DIR may send a Notice of Intent to Suspend to the Vendor providing the reasons for the proposed suspension. Vendor shall have five (5) business days from receipt of the Notice of Intent to Suspend to provide a written response. At the expiration of the 5 business days, DIR will make a determination whether a violation(s) of the contract occurred. In those instances where a violation is found to have occurred, DIR shall decide on a period of suspension up to 180 calendar days in length and send a written notice of the period of suspension and the related findings to Vendor. The suspension shall be effective from the date of receipt by Vendor. DIR may issue a Notice of Intent to Suspend under the proper circumstances, which include, but are not limited to the events listed below:

- 1) Vendor or Vendor's Worker(s) no longer holds necessary license(s) or certificate(s) required to perform the work under any Work Order;
- 2) Vendor falsifies an invoice for services or travel reimbursement;
- 3) Vendor is prohibited from contacting a Customer to discuss an "open" competitive solicitation during the Work Order Solicitation; however, Vendor is allowed to market their business to Customers.
- 4) Vendor or its Workers have engaged in practices prohibited in Section 6+, Purchase Orders, Invoices and Payments hereof; Section 8, Vendor Responsibilities; hereof; and Section 7, Intellectual Property Matters, in the Contract;
- 5) Vendor or Vendor's Worker commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Vendor's performance under this Contract in accordance with its terms.

**15. Substitution of Workers**

- A. During the ITSAC process for competitive Work Order Solicitations, Vendors can only submit candidates to DIR for the positions being solicited and not directly to the Customer.

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- B.** If Customer determines the Worker does not meet the qualifications needed, has not followed applicable safety standards or for any other reason is unable to complete the assignment satisfactorily, Customer will direct Vendor to resolve the complaint or remove its Worker immediately. If Vendor is unable to resolve the complaint immediately or provide a satisfactory substitute Worker within seven (7) business days, the Purchase Order may be terminated, and Customer may select another Vendor to finish the remaining work as outlined in the Work Order Solicitation
- C.** If a Worker no longer provides services for Vendor, Vendor shall have up to seven (7) business days to replace the Worker with a substitute satisfactory to DIR and its Customer. Vendor shall use its best efforts to provide a substitute Worker at the same, or a lower rate than that charged for the replaced Worker's services. If the rate for the substitute Worker is higher than the rate charged for the replaced Worker's services and the higher rate is unacceptable to DIR, or if the Vendor is unable to provide a satisfactory substitute Worker within seven (7) business days, the appropriate Work Order may be terminated, and DIR may select another Vendor to finish the remaining work.
- D.** In the event the Worker cancels his/her obligation without cause prior to the original termination date, Customer may require the Vendor to provide a replacement to complete the obligation that the departing individual did not fulfill. The replacement must be approved by Customer and will be provided at no charge for a time equal to seven (7) business days, not to exceed fourteen (14) business days. This gratis period is to cover the cost to Customer of retraining the replacement individual on the internal Customer systems.
- E.** Except when a Worker leaves employment voluntarily, the Vendor may not remove a Worker from a project without prior written consent of DIR.
- F.** Vendor is responsible to retrieve from all Workers as they transition from work on a Work Order, whether voluntarily or involuntarily, all keys, access cards, files, equipment and all other property and security devices that may have been issued to Worker by DIR's Customer and to deliver the items to the Customer.

**16. ITSAC Protocol**

- A.** The Vendor shall not hire employees of a DIR Customer and offer such employees as Workers for a Work Order Solicitation on which that employee is currently participating. Unless an employee is released from employment, Vendor shall not hire an employee of another Vendor providing Workers to a DIR Customer and offer such employee as Workers for a Work Order Solicitation on which that Worker is currently participating until such time as the Purchase Order under which that Worker was originally obtained has expired or been terminated pursuant to Section 9.4) b). (Worker/Candidate is responsible for contractual obligations to the Vendor that initially submitted the worker/candidate to the Customer).
- B.** Worker who is currently on contract to a Customer through the DIR ITSAC program will not be considered for additional DIR Work Order Solicitations having overlapping timeframes. However, at the discretion of a DIR Customer, Workers who are currently assigned to a DIR Customer through the DIR ITSAC program may be considered for additional DIR ITSAC work

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from the same DIR Customer. Vendors shall not submit the names of the same Worker for an overlapping time frame unless previously agreed to by the Customer.

**17. Non-Solicitation of State Employees**

- A. Vendor shall not solicit, directly or indirectly, any employee of DIR who is associated with this Contract for a period of 90 calendar days following completion of the Contract. Further, Vendor shall not solicit for a period of 90 days following completion of the Work Order, directly or indirectly, any employee of a DIR Customer who has participated in any projects on which the Vendor's Workers have been assigned.
- B. DIR and its Customer agree not to solicit employees of the Vendor, during the term of the appropriate Work Order, and for a period of 90 calendar days thereafter.

**18. Warranty**

The Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor's employee (candidate) has made errors in completed work. Customer will immediately inform the Vendor of the Customer's determination. Vendor shall make corrections and revisions as necessary to provide the Customer with an acceptable Work Product without cost to Customer. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original work.

**19. 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. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**20. Captions**

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**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

➤ **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
- ☐ Section 2 c. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - No
- ☐ Section 4 - Affirmation
- ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment, including transportation and delivery), complete:**

- ☒ Section 1 - Respondent and Requisition Information
- ☒ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- ☒ Section 3 - Self Performing Justification
- ☒ Section 4 - Affirmation

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



# HUB Subcontracting Plan (HSP)

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

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

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

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

## SECTION-1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Austin Ribbon & Computer Supplies, Inc. State of Texas VID #: 1742339797900  
Point of Contact: Ryan Grant Phone #: 512-452-0651  
E-mail Address: ryan.grant@arc-is.com Fax #: 512-452-0691
- b. Is your company a State of Texas certified HUB? ☒ - Yes ☐ - No
- c. Requisition #: DIR-TSO-TMP-242 Bid Open Date: 04/28/2016

(mm/dd/yyyy)

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-2: RESPONDENT's SUBCONTRACTING INTENTIONS**

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

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

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

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

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

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

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

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

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

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-2 RESPONDENT's SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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



Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.Requisition #: DIR-TSO-TMP-242**SECTION-3 SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment, to include transportation and delivery.

Austin Ribbon & Computer Supplies, Inc. does not foresee the need to utilize subcontractors at this time. All services will be performed/fulfilled by ARC personnel.

If this changes in the future ARC will submit a new HUB Subcontracting Plan to DIR.

**SECTION-4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

signature on file

Signature

Ryan Grant

Printed Name

President

Title

4/25/2016Date  
(mm/dd/yyyy)**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.



# HSP Good Faith Effort - Method B (Attachment B)

Rev. 09/15

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.

Requisition #: DIR-TSO-TMP-242

**IMPORTANT:** If you responded "**No**" to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If Yes, continue to SECTION B-4.)

☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

**a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscblsearch/index.jsp>. HUB status code "**A**" signifies that the company is a Texas certified HUB.

**b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

**c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

**d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 09/15

Enter your company's name here: Austin Ribbon & Computer Supplies, Inc.

Requisition #: DIR-TSO-TMP-242

## SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

## SECTION: A PRIME CONTRACTOR'S INFORMATION

Company Name:	<u>Austin Ribbon &amp; Computer Supplies, Inc.</u>	State of Texas VID #:	<u>1742339797900</u>
Point-of-Contact:	<u>Ryan Grant</u>	Phone #:	<u>512-452-0651</u>
E-mail Address:	<u>ryan.grant@arc-is.com</u>	Fax #:	<u>512-452-0691</u>

## SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name:			
Point-of-Contact:		Phone #:	
Requisition #:	<u>DIR-TSO-TMP-242</u>	Bid Open Date:	<u>04/28/2016</u> (mm/dd/yyyy)

## SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_ .  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).*

*(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

### 2. Subcontracting Opportunity Scope of Work:

### 3. Required Qualifications:

☐ - Not Applicable

### 4. Bonding/Insurance Requirements:

☐ - Not Applicable

### 5. Location to review plans/specifications:

☐ - Not Applicable

Vendor Name: GTS Technology Solutions, Inc.

Category	Title	Level	Pricing		
			Not-to-Exceed Rate (\$ per Hour)		
			Technology Type		
			Legacy	Core	Emerging
			NTE Rate	NTE Rate	NTE Rate
Applications	Programmer/ Developer Analyst	Developer Analyst 1	\$76.42	\$73.45	\$76.56
		Developer Analyst 2	\$81.63	\$85.98	\$96.52
		Developer Analyst 3	\$104.21	\$100.40	\$113.53
	Programmer/Developer	Developer 1	\$72.95	\$71.20	\$75.01
		Developer 2	\$86.84	\$83.75	\$94.26
		Developer 3	\$99.00	\$97.25	\$109.39
	Software Test Analyst	Software Test Analyst 1	\$60.79	\$65.28	\$71.39
		Software Test Analyst 2	\$65.88	\$71.07	\$82.57
		Software Test Analyst 3	\$76.46	\$81.99	\$96.43
	Technical Writer	Technical Writer 1	\$48.17	\$51.98	\$56.19
		Technical Writer 2	\$56.90	\$61.03	\$65.57
		Technical Writer 3	\$66.11	\$69.01	\$76.10
	Business Analyst	Business Analyst 1	\$64.68	\$70.15	\$76.40
		Business Analyst 2	\$85.10	\$87.06	\$90.01
		Business Analyst 3	\$105.94	\$105.94	\$106.02
	System Analyst	System Analyst 1	\$65.25	\$65.45	\$81.37
		System Analyst 2	\$75.77	\$87.03	\$95.50
		System Analyst 3	\$88.43	\$102.47	\$106.40
Data Management	Database Architect	Database Architect 1	\$79.58	\$76.68	\$83.38
		Database Architect 2	\$93.42	\$95.23	\$97.31
		Database Architect 3	\$121.58	\$130.26	\$130.26
	Data Warehouse Architect	Data Warehouse Architect 1	\$88.23	\$88.58	\$88.58
		Data Warehouse Architect 2	\$96.88	\$97.26	\$101.25
		Data Warehouse Architect 3	\$118.10	\$118.10	\$118.44
	Database Administrator	Database Administrator 1	\$78.16	\$80.16	\$86.63
		Database Administrator 2	\$83.04	\$93.61	\$101.54
		Database Administrator 3	\$102.47	\$116.37	\$118.72
Enterprise Architect	Enterprise Architect	Enterprise Architect 1	\$128.52	\$130.04	\$143.75
		Enterprise Architect 2	\$154.58	\$168.47	\$167.51
Project Management	Project Manager	Project Manager 1	\$84.93	\$96.73	\$105.63
		Project Manager 2	\$103.67	\$116.33	\$125.20
	Project Lead	Project Lead 1	\$80.84	\$87.16	\$94.07
		Project Lead 2	\$95.42	\$108.37	\$116.95
Telecom/Networking	Network Engineer	Network Engineer 1	\$77.02	\$88.58	\$99.07
		Network Engineer 2	\$94.21	\$113.31	\$123.18
	Network Administrator	Network Administrator 1	\$55.97	\$57.67	\$65.73
		Network Administrator 2	\$65.75	\$76.42	\$87.15
		Network Administrator 3	\$62.82	\$82.15	\$90.78
Security	Security Analyst	Security Analyst 1	\$88.66	\$99.99	\$111.48
		Security Analyst 2	\$100.51	\$113.22	\$126.76
	Security Engineer	Security Engineer	\$105.78	\$119.46	\$135.03
	Security Architect	Security Architect	\$128.25	\$161.97	\$161.97
Customer Technical Support	Help Desk	Help Desk 1	\$39.95	\$42.98	\$47.11
		Help Desk 2	\$47.00	\$53.12	\$55.08
		Help Desk 3	\$54.92	\$58.60	\$63.58
	Technical Support	Technical Support 1	\$46.13	\$42.00	\$57.23
		Technical Support 2	\$56.73	\$58.71	\$66.58
		Technical Support 3	\$63.20	\$67.80	\$76.38
Information Technology Service Management (ITSM Operations)	Organizational Change Management/OCM Analyst	OCM Analyst 1	\$90.31	\$90.31	\$90.31
		OCM Analyst 2	\$119.84	\$119.84	\$119.84
IT Marketing	Information Technology Communication Coordinators	IT Communications Coordinator 1	\$57.31	\$57.31	\$57.31
		IT Communications Coordinator 2	\$81.63	\$81.63	\$81.63
Information Technology Training	IT End Users Trainer	End User Trainer 1	\$76.42	\$76.42	\$76.42
		End User Trainer 2	\$100.73	\$100.73	\$100.73
Information Technology Contract Management	IT Contract Manager	IT Contract Manager 1	\$97.26	\$97.26	\$97.26
		IT Contract Manager 2	\$118.10	\$118.10	\$118.10

City of Georgetown, Texas  
Government and Finance Advisory Board  
March 27, 2019

**SUBJECT:**

Consideration and possible action to approve an annual appropriation of \$60,366 to Elster Solutions, LLC to renew software maintenance on the City's advanced metering infrastructure software. Chris Bryce, IT Director

**ITEM SUMMARY:**

This item is for renewal of the City's annual software maintenance contract with Honeywell / Elster Solutions LLC.

Elster provides the City's advanced metering infrastructure (AMI) software, allowing the City to remotely collect utility meter readings. Renewal of the contract is necessary to maintain current updates and support for the AMI software system. This software is considered mission critical.

Maintenance costs for this product are based on the number of utility meters being managed by the software. Costs increased from \$48,000 to \$60,366 in Fiscal Year 2019 due to the addition of 5,858 new utility meters.

**FINANCIAL IMPACT:**

All items were budgeted during the FY 2019 budget process. Expenses will be recorded in account 570-5-0641-51-341 (Annual Contracts).

**SUBMITTED BY:**

Chris Bryce, IT Director

**ATTACHMENTS:**

Description	Type
☐ Invoice from Honeywell / Elster Solutions, LLC.	Backup Material



Elster Solutions, LLC  
208 South Rogers Lane  
RALEIGH NC 27610  
USA

Page 1 of 3  
22 February 2019

## Invoice

<b>Bill-To-Party</b> City of Georgetown, Texas 113 West 8th GEORGETOWN TX 78627 USA	<b>Information</b> <b>Invoice Number</b> 9000087935 <b>Invoice Date</b> 12/15/2018 <b>Sales Order no./Date</b> 40001056/ 12/03/2018 <b>Purchase Order #:</b> Annual SMA Renewal <b>PO Date</b> <b>Customer No.</b> 1001024 <b>Invoice Amt</b> 60,366.00 USD <b>Term of Payment</b> Due Net in 30 days <b>Incoterm</b> FOB <b>Incoterm Description</b> Destination <b>Country of Ultimate Destination</b> USA <b>Sales Engineer</b> Steve Steele
<b>Ship-To-Party</b> City of Georgetown, Texas 113 West 8th GEORGETOWN TX 78627 USA	
<b>Remit Payment To</b> Elster Solutions, LLC PO Box 27858 Chicago IL 60673-1274	

Item	Material/Description/PO Item	Quantity	HS No.	Orig Cntry	Unit Price	Per	Total Price
	Additional Software License needed because 1918 Additional endpoints were added						
	Additional Software License needed because 3,940 additional endpoints were added.						
10	SMA_EA_THIRDPTY	1 EA			60,366.00	1	60,366.00
	2019 SMA 01/01/19 to 12/31/19						
<b>Invoice Amount</b>							60,366.00

### Electronic Funds Transfer Information

JP Morgan Chase Bank, N. A.  
4 New York Plaza, Floor 15, New York, NY  
ACH or WIRE - ABA No.: 021000021, Acct: 581946659 Type: Checking SWIFT Code: CHASUS33XXX  
Please email remittance advice to [ElsterCashApplication@Honeywell.com](mailto:ElsterCashApplication@Honeywell.com) or call 1-302-800-5079



# ELSTER / HONEYWELL

## GENERAL TERMS AND CONDITIONS OF SALE

Invoice # 9000087935

### 1 General

These terms and conditions may not be changed or superseded by any different or additional terms and conditions proposed by Client in a purchase order or other document, unless expressly agreed to in writing by Elster. Notwithstanding the foregoing, any software licenses purchased by Client shall be governed exclusively by the terms and conditions of the applicable systems license agreement (including, if applicable, a shrink-wrap or click-wrap system license agreement) in effect between the parties.

### 2 Prices

Unless otherwise stated in writing, all proposals or quotations from Elster expire thirty (30) days from the date thereof.

Elster prices do not include federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Client will assume payment of all taxes, duties, fees and other charges assessed by any taxing authority in the Client's country or country of ultimate destination with respect to goods ordered. Client agrees to pay or reimburse any such taxes, duties, fees or other charges which Elster or its suppliers are required to pay or collect. If Client is exempt from the payment of any tax and holds an exemption certificate or direct payment permit, Client shall upon order placement, provide Elster a copy of the certificate or permit acceptable to the relevant governmental authorities. Upon delivery by Client of an exemption certificate or other claim for tax exemption, Client will indemnify and hold harmless Elster from any sales, use, value-added or similar tax, charge, excise or fee (including interest, penalties, attorneys' fees and related dispute resolution charges) assessed against or incurred by Elster in reliance on such Client exemption claim.

Elster Services prices are based on Services provided during normal business hours (8 a.m. to 5 p.m. U.S. Eastern Time, Monday through Friday, excluding Elster holidays). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; Sunday hours will be billed at two (2) times the hourly rate; and hours incurred during Elster holidays will be billed at three (3) times the hourly rate. Services rates shall be those set forth in Elster's Professional Services Rate Schedule in effect at contract signing. Rates are firm for a period of one year from the contract Effective Date. Thereafter, Elster may at its discretion adjust Services rates, but no more often than once annually.

For multi-year contracts, the purchase price of Equipment will remain fixed during the first two (2) years of the contract term. Beginning with year three (3) of the contract term, the purchase price of Equipment may be increased annually by the percent increase in the Bureau of Labor Statistics commodity Producer Price Index ("PPI") when comparing the most recent applicable PPI index with the prior year's applicable PPI index, but only if the percent increase is greater than one percent (1%). The applicable commodity PPI indices for electric meters, gas meters, and gas and water modules are: (i) electric meters: PCU3345153345159; (ii) gas meters: PCU3345143345141; and (iii) gas and water modules: PCU334220334220.

### 3 Changes

Any changes requested by Client affecting the project scope, schedule, or other aspects of the work must be accepted by Elster, and impacted provisions of the contract, including but not limited to price, schedule, license fees, warranties, etc., mutually agreed to in writing prior to implementation of any change.

Client requested changes in the scope will be priced per the unit pricing stated in the pricing exhibit(s) attached to and incorporated as part of the Agreement between the parties, or otherwise as quoted by Elster on a case-by-case basis.

Any changes to the system or hardware initiated by Client before or after delivery may necessitate upgrades to third party licenses. Any additional third party license fees will be the responsibility of Client unless such costs are specifically noted as included in the scope of work pricing.

Elster may, at its expense and in its sole discretion, make changes in the goods and services as it deems necessary to conform the goods and services to applicable specifications. If the customer objects to any such changes, Elster shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection. In addition, during the provisioning of goods and services, Elster may pass along to Client certain incidental costs incurred by Elster in the provisioning of such goods and services that directly relate to the provisioning thereof, such as mounting brackets, washers, gaskets and the like, with such costs not to exceed \$10,000.

### 4 Delays

Goods and Services provided by Elster are planned and priced based on project requirements, and are sensitive to proper utilization of assets and committed resources. Unscheduled delays that prevent Elster or its subcontractors from working at the planned pace represent a risk to meeting overall project objectives. Elster will work closely with Client in an effort to minimize the potential for delays through careful planning and documentation of key interdependencies. If, however, the delivery of goods or the performance of Services are delayed as a result of acts or omissions by Client or its representatives and not by Elster or by reasons of force majeure, Client shall reimburse Elster for direct costs it incurs as a result of Client's delay. Elster may, at its discretion, deem such delay a suspension of the Agreement by the Client, and as a result not be bound by the pricing set forth in the Pricing Schedule or by the list of deliverables, and may at its discretion require Client to renegotiate prices.

If either Party causes a delay in the progress of the Work not otherwise excused or addressed in the Contract Documents, such Party shall use Commercially Reasonable Efforts (all without additional cost to the other Party) to complete its Work within the times set forth in the Contract Documents and project schedule.

### 5 Delivery

All goods manufactured, assembled or warehoused in the continental United States or Mexico and delivered within the United States will be delivered FOB Origin Elster factory unless designated otherwise in the Pricing Schedule Exhibit F accompanying these General Terms and Conditions. Goods delivered outside the United States will be delivered Ex Works Elster factory, and Client shall arrange for export clearance. Client shall be responsible for any and all demurrage or detention charges.

If the scheduled delivery of goods is delayed by Client or by Force Majeure, Elster may move the goods to storage for the account of and at the risk of Client whereupon it shall be deemed to be delivered.

Shipping and delivery dates are contingent upon Client's timely approvals and delivery by Client of any documentation required for Elster's performance hereunder.

Claims for shortages or other errors in delivery must be made in writing to Elster within ten (10) business days of delivery. Goods may not be returned except with the prior written consent of and subject to terms specified by Elster. Claims for damage after delivery shall be made directly by Client with the common carrier.

Unless otherwise agreed in writing by the parties, the Client shall be responsible for any required export/import licenses. The obligations of the Client to pay for the goods shall not in any manner be waived by the delay or failure to secure or renew, or by the cancellation of, any required export/import licenses.

### 6 Title and Risk of Loss

For US goods deliveries FOB Origin, Freight Prepaid, Elster will be responsible for freight charges and freight claims, while the Client will assume title/ownership of the goods at the time of carrier pick-up.

For US goods deliveries FOB Destination, Freight Prepaid, Elster will be responsible for freight charges and freight claims, and will retain title/ownership of the goods until delivered; if US goods deliveries are FOB Destination, Freight Collect, Client will be responsible for freight charges and freight claims, while Elster will retain title/ownership of the goods until delivered.

For goods delivered outside the United States, title/ownership and risk of loss shall pass to the Client upon delivery Ex Works Elster factory as defined in INCOTERMS 2010.

For software deliveries to Client, title/ownership of the software shall remain with Elster, and Client will be issued a license to use such software pursuant to the terms of a software or system license agreement executed between the parties.

### 7 Inspection and Acceptance

Client shall have up to thirty (30) days after delivery of the goods to the specified delivery point or after provisioning of Services, to inspect and reject or accept the goods or Services ("Acceptance Period"). In the event that Client does not reject the goods or Services in writing citing any applicable non-conformity to a purchase order, order release or specification during the Acceptance Period, the applicable goods or Services shall be deemed accepted. Following expiration of the Acceptance Period, deliverables shall be governed in accordance with the applicable warranty clause contained herein.

### 8 Invoicing / Payment

Elster deliverables will be invoiced and paid in accordance with the following terms:

#### 8.1 Meters / Equipment / Devices

Invoiced Ex Works, point of shipment from the factory with payment due 30 days from the date of invoice in accordance with the payment terms herein.

#### 8.2 System License Fees

Base license fees and incremental license fees are based on the size of the deployment and the corresponding Connexo license tier available to the Licensee. Base license fees and incremental license fees are invoiced after completing Connexo installation and onsite training. If the total number of AMI / AMR devices increase beyond the limits of the assigned tier, Licensee must upgrade to a higher tier and corresponding upgrade, backup and test system fees apply. Licensor will conduct quarterly audits to determine if additional license fees are due. Any additional fees due will be invoiced following the audit with payment due thirty (30) days from the date of invoice and as provided in the SLA. No credit will be given following quarterly audits reflecting fewer meters on the System.

#### 8.3 System Maintenance Fees

System Maintenance due for the first partial calendar year of the Agreement will be invoiced after completing System installation and training, and annually thereafter unless terminated by Client following the first complete calendar year of the Agreement. Invoices payments are due thirty (30) days from the date of invoice and as provided in the SMA.

#### 8.4 Handheld Unit Maintenance Fees

Handheld Unit Maintenance Fees for the initial term are prorated from the Effective Date of the Agreement for the number of days remaining in the calendar year and invoiced accordingly. Thereafter annual HMA renewal fees are invoiced in October of the current year for the following annual term. Invoices payments are due thirty (30) days from the date of invoice and as provided in the HMA. Elster may change the annual invoice month upon prior written notice.

#### 8.5 Project Services Fees

Project Services begins at contract signing and continues through project delivery, and includes installation, integration, support and training as further described in the Statement of Work.

Project Services fees are defined in Pricing Schedule Exhibit F and are generally invoiced in monthly installments through completion of project services. Payments are due thirty (30) days from the date of invoice.

#### 8.6 Travel and Living Expenses

Travel and per diem expenses for Elster personnel working on-site shall be billed monthly at cost plus ten percent (10%). Airfare will be coach fare with moderate hotel accommodations. Receipts for expenses over \$25 will be furnished upon request. Reimbursement for such expenses are due thirty (30) days from the date of invoice.

#### 8.7 Payment terms

Elster, payment terms are net cash, payable without offset, in United States Dollars, for receipt within 30 days from date of invoice by wire transfer or other mutually agreed method. For any amount past due, Client shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or the highest applicable rate allowed by law on all such overdue amounts plus Elster's attorneys' fees and court costs incurred in connection with collection.

### 9 Warranties and Remedies

#### 9.1 Goods Warranty

Elster warrants that goods shall be delivered free of defects in material and workmanship. The warranty remedy period for goods shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. Goods are defined as products manufactured by Elster (meters, modules, equipment, etc.) , including but not limited to: electric/smart meters, gatekeepers, routers, repeaters, water modules, gas modules, IP AxisLink devices, AGI nodes, mobile interrogators, VID's, handheld meter reading units, optical probes as well as components not manufactured by Elster but incorporated into the goods. All products repaired or replaced, if any, are warranted only for the remaining and unexpired portion of the original warranty period.

#### 9.2 Goods Remedy

If a nonconformity to the foregoing warranty is discovered in the goods during the applicable warranty remedy period under normal and proper use, and provided the goods have been properly stored, installed, operated and maintained (Client to provide proper records), and written notice of such nonconformity is provided to Elster promptly after such discovery and within the applicable warranty remedy period, Elster shall, at its option, either (i) repair or replace the nonconforming portion of the goods, or (ii) refund the portion of the price applicable to the nonconforming portion of goods.

#### 9.3 Services Warranty

Elster warrants that services shall be performed in a good and workmanlike manner. The warranty remedy period for services shall end ninety (90) days after the date of completion of services.

#### 9.4 Services Remedy

If a nonconformity to the foregoing warranty is discovered in the services during the applicable warranty remedy period, and written notice of such nonconformity is provided to Elster promptly after such discovery and within the applicable warranty remedy period, Elster shall, at its option, either (i) re-perform the nonconforming services or (ii) refund the portion of the price applicable to the nonconforming portion of the services.

#### 9.5 Third Party Goods Warranty

Goods supplied by Elster but manufactured by others are warranted only to the extent of the manufacturer's warranty

#### 9.6 Third Party Goods Remedy

Remedies, if any, are provided by the manufacturer

#### 9.7 Additional Warranties

Notwithstanding the foregoing, certain warranties may be provided under the System License Agreement, the System Maintenance Agreement and the Handheld Unit Maintenance Agreement, but any such warranties are subject to the terms thereof and do not apply to the goods and services warranted in this Section 9.

9.8 Warranty Returns

For warranty returns of Elster metering hardware, Client will pay freight to Elster point of manufacture. Elster will provide all freight charges for return of repaired or replaced items from its factory. After expiration of the warranty period, Client is responsible for payment of any support or maintenance agreements for computer hardware and/or third party software used in the system.

9.9 Exceptions

In no event shall Elster be responsible for gaining access to the goods, disassembly, reassembly or transportation of the goods or parts from or to the place of installation, all of which shall be at Client's risk and expense. Elster shall have no obligation hereunder with respect to any goods which (i) have been improperly repaired or altered; (ii) have been subjected to misuse, negligence or accident; (iii) have been damaged due to forces of nature; (iv) have been used in a manner contrary to Elster's instructions; or (v) are comprised of materials provided by or a design specified by Client.

The foregoing warranties are exclusive and in lieu of all other warranties of quality and performance, whether written, oral or implied, and all other warranties including any implied warranties of merchantability or fitness for a particular purpose, non-infringement or usage of trade are hereby disclaimed. The remedies stated herein constitute client's exclusive remedies and Elster's entire liability for any breach of warranty.

Notwithstanding the foregoing, goods and equipment manufactured by others and supplied by Elster are warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed as the warranties provided herein do not apply to such goods and equipment. Without limiting the generality of the foregoing, while Elster may incorporate a third party AMR/AMI communication module into the goods, Elster disclaims any and all warranties, express or implied, regarding the module and the operation of the combined module/meter, including the implied warranties of merchantability and fitness for a particular purpose, any warranties arising from the course of dealing or trade usage, and compliance of the module and the combined module/meter with the ANSI or FCC requirements. While Elster may act as a broker for the module manufacturer and may assist Client in obtaining the benefits of the module manufacturer's warranties, any express or implied warranty regarding the module or the operation of the combined module/meter, to the extent any such warranty may exist, is provided solely by the module's manufacturer.

10 Limitation of Liability

IN NO EVENT WILL ELSTER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, STATUTORY, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM ELSTER'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, OR THE FURNISHING, PERFORMANCE, OR USE OF ANY GOODS OR SERVICES SOLD PURSUANT HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, THE NEGLIGENCE OF ELSTER), BY OPERATION OF LAW OR OTHERWISE. THE AGGREGATE LIABILITY OF ELSTER FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL IN NO CASE EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID FOR THE SPECIFIC PRODUCT GIVING RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS IF LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE.

All causes of action against Elster arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one year of the installation of the product to which such claim relates.

11 Force Majeure

Neither party shall be liable for loss, damage, or delay nor be in default for failure to perform (other than payment obligations) due to causes beyond its reasonable control, including but not limited to acts of God, acts of war or terrorism, fire, flood, strike, labor disputes, acts or omissions of any governmental authority or of the other party, compliance with government regulations, embargos, fuel or energy shortage, delays in transportation, inability to obtain necessary labor, materials, or services from usual sources, or from defects or delays in performance of a party's suppliers or subcontractors due to such causes. In the event of a delay by either party due to the foregoing, the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the delay.

12 Termination

Any order, contract or agreement may be terminated by Client by written notice and payment of reasonable and proper termination charges, including but not limited to all costs associated with the order or contract incurred up to the date of the notice of termination (including, without limitation, demobilization costs, sub-supplier and subcontractor termination charges, and standard restocking fees), plus a fixed sum of ten (10) percent of the final total contract price to compensate for disruption in scheduling, planned production and other indirect costs. Payments shall be made within 30 calendar days from receipt of invoice and acceptance of the goods in accordance with these General Terms and Conditions of Sale. No termination by Client for default shall be effective unless, within thirty (30) days after receipt by Elster of Client's written notice specifying such default, Elster has failed to initiate and pursue with due diligence correction of such specified default.

Elster may terminate any order, contract or agreement and any license granted thereunder at any time and for any reason, including nonpayment or other material breach by Client that is not cured within thirty (30) days following written notice thereof.

13 Assignment

Neither this Agreement nor any interest under this Agreement shall be assigned by Client without the prior written consent of Elster, except that either Party may assign this Agreement without prior consent in connection with a sale of controlling interest in the capital stock or other equity interest of such Party, a sale of all or substantially all of the assets of such Party, or pursuant to a merger or consolidation. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. If Client is involved with or subject to a merger or acquisition that materially impacts the provision of services and/or goods by Elster hereunder by increasing the cost of providing services and goods by Elster, then Elster may pass along such increase costs to Client.

14 Confidentiality

Each Party (the "Receiving Party") shall maintain in strict confidence any and all proprietary and confidential information about the business, operations or customers of the other Party or any of their affiliates which it acquires in any form from the other Party (the "Disclosing Party"), including without limitation the terms of this Agreement, or any other information disclosed by the Disclosing Party and identified by Disclosing Party as confidential ("Confidential Information"). The Receiving Party will not disclose such Confidential Information with any third parties without the Disclosing Party's prior written consent. The Receiving Party further agrees to use its best efforts and to take all reasonable precautions to maintain strict confidentiality with respect to the Confidential Information and to prevent disclosure thereof to persons other than its employees, accountants, affiliates, attorneys, bankers, consultants, insurance advisors and carriers, and agents who need access to such information to carry out a Party's obligations under this Agreement, and the Receiving Party shall be liable for the compliance by such third parties with the confidentiality obligations hereof.

The Receiving Party shall not use, or permit the use of, the Confidential Information for any purpose other than performing this Agreement and exercising the rights granted under this Agreement. The Receiving Party acknowledges that the rights of the Disclosing Party in the Confidential Information are unique, and accordingly the Disclosing Party shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights hereunder by an action for injunctive relief and specific performance to the full extent permitted by law. Upon termination of this Agreement and the written request of the Disclosing Party, the Receiving Party shall return or destroy all copies of all Confidential Information to the Disclosing Party. Notwithstanding the foregoing, to the extent it would be unreasonably costly or cumbersome, neither Party shall be required to delete intangible copies of Confidential Information that is made as part of such Party's routine systems back-up procedures.

15 Release of Information

Following contract signature, either Party may as a matter of public record issue a press release or other public disclosure acknowledging the existence of the relationship between the Parties and the general nature of this Agreement. Neither Party will however, before or after contract signature, use the other Party's name, trademarks or logos for the specific purpose of advertising, promotion or publicity without the prior written consent of the other Party, which will not be unreasonably withheld.

16 Waiver

The failure of a Party at any time to require performance of any provision of this Agreement shall in no manner affect the right at a later date to enforce the same, or to enforce any future compliance with or performance of any of the provisions of this Agreement. No waiver by a Party of any condition or breach of any provision, term or covenant in this Agreement, whether by conduct or otherwise, shall be deemed to be or construed as a continuing waiver of any such condition or the breach of any other provision, term or covenant of this Agreement.

17 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws of such state and without regard to the United Nations Convention on the International Sale of Goods of 1980 and any amendments or successors thereto. All actions hereunder or in relation hereto shall be brought and tried solely and exclusively in the state and federal courts located in New York, and the Parties hereby expressly consent to the jurisdiction thereof.

18 Export Control

Client represents and warrants that the goods and services provided hereunder and the "direct products" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Client agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by Elster or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.

If applicable, Elster shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Client. Client shall furnish such documentation within a reasonable time after order acceptance.

Any delay in obtaining such license shall suspend performance of this Agreement by Elster. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by Elster without liability for damages of any kind resulting from such cancellation. At Elster's request, Client shall provide Elster with a Letter of Assurance and End-User Statement in a form reasonably satisfactory to Elster.

19 Resale

If Client resells any of the goods (other than software, which is non-transferable), the sale terms shall limit Elster's liability to the buyer to the same extent that Elster's liability to Client is limited hereunder. In addition, when reselling any of the goods, Client shall maintain strict compliance with the Export Administration Act of 1979, as amended or any other United States laws and regulations as shall from time to time govern the sale, license and delivery of technology or goods abroad by persons subject to United States law. Resale of goods does not transfer unique LAN identification or software embedded in or related to meters. The buyer of resold goods must contact Elster directly for such components.

20 Dispute Resolution

20.1 Escalation

The Parties shall use reasonable efforts to settle any disputes related to this Agreement through efficient communication and informed discussion. Either Party may by written notice, inform the other Party of a dispute under this Agreement by describing the nature of the dispute and the matters at issue. Upon receipt of such notice, the other Party shall respond in writing within ten (10) days. The Parties shall cooperate by providing information and answering questions to facilitate an informed discussion of the issues in dispute. If the dispute is not resolved to the satisfaction of either Party within ten (10) days following the written response, either Party may require that a vice president or comparable upper level manager of each Party discuss the dispute and attempt to resolve it.

20.2 Mediation

If the Parties cannot resolve a dispute under the process set forth above, either Party may refer the dispute to non-binding mediation by a neutral third Party approved by the International Institute for Conflict Prevention and Dispute Resolution (CPR). The mediation shall occur at a site mutually agreed upon by the Parties, or in the absence of such agreement, in the State of North Carolina. Regardless of which Party refers to mediation, both Parties agree to cooperate in and share equally in the costs. No offer, finding, action, inaction or recommendation made or taken in or as a result of mediation shall be considered for any purpose an admission of a Party, nor shall it be offered or entered into evidence in any legal proceeding. Either Party may terminate mediation after sixty (60) days from its commencement.

20.3 Other Methods

The availability of the above resolution methods shall not preclude a Party from exercising any and all legal rights available to it under this Agreement.

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