

**INTERSTATE COOPERATION CONTRACT**  
**for Texas Department of Information Resource Technology Contracts**

THIS INTERSTATE COOPERATION CONTRACT is entered into by and between Raytown C-2 School District, with its principal place of business at 6608 Raytown Rd., Raytown, Missouri 64133 and the STATE OF TEXAS, acting by and through the DEPARTMENT OF INFORMATION RESOURCES, 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 for Texas based Customers and Section 2054.0565, Texas Government Code, for out of state Customers.

**I. STATEMENT OF PURPOSE:**

The purpose of this Interstate Cooperation Contract [Contract] is to allow DIR Customer to purchase information resources technologies through DIR Contracts.

**II. CONSIDERATION:**

- a. Per the Interlocal Cooperation Act, Texas Government Code, § 791.025, or other applicable law, the DIR Customer satisfies the requirement to seek competitive bids for the purchase of goods and/or services.
- b. DIR agrees to allow DIR Customer to procure information resources technologies through existing Vendor contracts and Vendor contracts that DIR may enter into during the term of this interstate cooperation contract, in accordance with specifications submitted through purchase orders from Customer. All DIR Vendor contracts shall be made available to the DIR Customer via the DIR Internet web site. DIR Customers utilizing the Cooperative Contracts shall issue a Purchase Order directly to the relevant Vendor. DIR Customers utilizing a DIR Contract for which DIR is the fiscal agent, the DIR Customer's Purchase Order shall be issued to DIR.
- c. DIR Customer agrees to notify DIR of any substantial problems in quality or service in relations with a vendor under a DIR vendor contract.

**III. PAYMENT FOR GOODS AND SERVICES:**

- a. DIR Customer shall comply with Chapter 2251, Texas Government Code, or applicable local law, in making payments to the Vendor. Payment under a DIR Contract shall not foreclose the right to recover wrongful payments.
- b. Payments must be made in accordance with laws and procedures applicable to DIR Customer.
- c. DIR Customer agrees to pay the rates and/or prices set by DIR with its vendors. DIR Customer understands these rates and/or prices include a DIR administrative fee.
- d. All purchases executed under a DIR Contract will require a DIR Customer purchase order.

**IV. TERM OF CONTRACT:**

This Interstate Cooperation Contract shall begin when fully executed by both parties and shall continue until terminated.

Either party, upon written notice, may terminate this contract on thirty (30) days advance written notice. Customers shall pay for all goods and services received through the effective date of termination.

**V. GOVERNING LAW AND OTHER REPRESENTATIONS:**

DIR Customer:

☐ Unit of Texas Local Government hereby certifying that is has statutory authority to perform its duties hereunder pursuant to Chapter \_\_\_\_\_ Code.

☒ Non-Texas State agency or unit of local government of another state hereby certifying that it has statutory authority to enter in to this Interstate Cooperation Contract and perform its duties hereunder pursuant to Section 34.047 Revised Missouri Statutes.

☐ Customer that is neither a unit of Texas Local Government nor a Non-Texas State agency or unit of local government of another state hereby certifies that it has statutory authority to enter in to this Interstate Cooperation Contract and perform its duties hereunder pursuant to \_\_\_\_\_.

## VI. CERTIFYING FUNCTION:

Department of Information Resources acting as the owner of the DIR Contracts hereby certifies the eligibility of the DIR Customer to use the DIR Contracts.

## VII. TERMS AND CONDITIONS FOR OUT OF STATE DIR CUSTOMERS:

### SELECTIONS PER THE GOVERNING LAW OF THE OUT OF STATE DIR CUSTOMER:

1. In any issue concerning this Interstate Cooperation Contract, or the DIR Contracts, in which DIR is involved shall be governed by the law of the State of Texas, excluding the conflict of law provisions.
2. Exclusive Venue for any litigation whatsoever involving DIR is the state district court of Travis County, Texas.
3. DIR Customer's use of the DIR Contracts shall be governed by the law of the State of Missouri, excluding the conflicts of law provisions.
4. Exclusive Venue for litigation arising between DIR Customer and Vendor from use of the DIR Contracts is Circuit Court of Cole County, Missouri.
5. The following dispute resolution procedures shall be used to resolve disputes arising from use of the DIR Contracts The State of Missouri does not have an official dispute resolution process; therefore legal remedies available by law would apply.

## VIII. Notification

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

### If sent to the DIR:

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

### DIR Customer:

Contact Name: Melissa Tebbenkamp  
Customer Name: Raytown C-2 School District  
Address: 6608 Raytown Road  
City, State, Zip Code: Raytown, MO 64133  
Phone Number: (816) 268-7122  
Facsimile: (816) 268-7129  
Email: melissa.tebbenkamp@raytownschools.org

This Interstate Cooperation Contract is executed to be effective as of the date of the last party to sign.

## Raytown C-2 School District

(Insert Entity Name here)

Authorized By: 

Name: Melissa Tebbenkamp

Title: Director of Instructional Technology

Date: May 5, 2020

**THE STATE OF TEXAS, acting by and through the DEPARTMENT OF INFORMATION RESOURCES**

Authorized By:   
7E04C0B913D547B

Name: Hershel Becker

Title: Chief Procurement Officer

5/18/2020 | 6:40 AM CDT

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

Office of General Counsel:   
E0361553326C469 Date: 5/17/2020 | 9:01 AM CDT

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES**

**Amazon Web Services, Inc.**

**1. 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 Amazon Web Services, Inc. ("Vendor"), with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-266, on February 10, 2017, for Cloud Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-266 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Sample Statement of Work; Appendix E, Service Agreement, Appendix F, Non-Disclosure Agreement; Appendix G, AWS GovCloud; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-266, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-266, 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 Appendix D, then Appendix E, then Appendix F, then Appendix G, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with two (2) optional one-year renewal periods. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

**3. Service Offerings****A. Services**

Services available under this Contract are limited to cloud services and related services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

**B. Emerging Technologies and Future Acquisitions**

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for services that are within the scope of Cloud Services. Vendor may propose such services throughout the term of the contract. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR's sole discretion and any decision will be final. In addition, Texas DIR and Vendor may mutually agree to add future acquisitions of Vendor to the contract. Subsequent terms of the acquisition(s) and pricing will be mutually agreed upon in writing and amended under the contract.

**4. 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.

**5. DIR Administrative Fee**

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

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

**6. Notification**

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

If sent to the State:

Kelly A Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-1647  
Facsimile: (512) 475-4759

Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

General Counsel  
410 Terry Avenue North  
Seattle, Washington 98109-5210  
Attention: General Counsel  
Fax: 206-266-7010

## **7. Statement of Work, Service Agreement, Shrink/Click-wrap Agreement**

### **A. Statement of Work and Service Agreement**

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix D of this Contract and the Service Agreement as set forth in Appendix E of this Contract. Customers may negotiate the terms and conditions of a SOW and Service Agreement to suit their business needs, so long as the negotiated terms and conditions do not diminish Vendor's commitments set forth in this Contract, including its appendices. Prior to becoming effective, a SOW must be mutually agreed upon in writing by Customer and Vendor.

### **B. Conflicting or Additional Terms**

In the event that conflicting terms in linked or supplemental documents diminish the liability rights of DIR Customers or the State, such conflicting terms shall not take precedence over the terms of this Contract. Notwithstanding the foregoing: (i), additions, changes, or different terms related to the operations of the Services set forth in linked or supplemental documents will not be construed as creating a conflict with the terms of this Contract; and (ii) nothing herein limits DIR Customer obligations to remain responsible for activities that occur under their AWS accounts in accordance with the Contract.

Vendor shall not unilaterally require any additional document outside of this Contract that: 1) diminishes the rights, benefits, or protections of the Customer, or the definitions or measurements of them; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions or measurements of them except for obligations related to new services, features, or functionality.

### **C. Shrink/Click-wrap License Agreement**

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

**8. Authorized Exceptions to Contract and any Appendices.**

- A. **Section 2. Definitions, B. Compliance Check**, is hereby replaced in its entirety with the following:

**Compliance Check** – an audit of Vendor’s compliance with the Contract with respect to Customers purchasing Vendor’s services under the agreement may be performed by, but not limited to, a third-party auditor, DIR Internal Audit department, or DIR contract management staff or their designees, in each case subject to entry of a non-disclosure agreement between Vendor and the relevant auditor as provided in Appendix F, Nondisclosure Agreement. A Compliance Check relating to financial or contract compliance can be satisfied by Vendor providing invoices, billing information and purchase orders relating to the agreement or other documents as requested by DIR in order to confirm that Vendor properly calculated and paid the Administrative Fee under the agreement; a Compliance Check relating to security concerns can be satisfied by Vendor providing DIR with Documentation (as defined in Appendix E - Services Agreement) or third party audit reports, such as SOC 1, Type 2 reports or their equivalent; provided, however, that if, despite third party audit reports, DIR has reason to believe that there are any security concerns that AWS is not addressing adequately, then DIR may require onsite inspection, subject to Section 8(C)(5) of this Appendix.

- B. **Section 2. Definitions, C. Contract**, is hereby replaced in its entirety with the following:

**Contract** - the document executed between DIR and Vendor into which this Appendix A, is incorporated. For the avoidance of doubt, all appendices, including Appendix E (“Service Agreement”) are incorporated into this agreement.

- C. **Section 2. Definitions, H. Service Agreement**, is hereby added:

**Service Agreement** – shall mean the Amazon Web Services (AWS) Customer Agreement between an individual Customer and Vendor as provided in Appendix E.

- D. **Section 3. General Provisions, H. Proof of Financial Stability**, is hereby replaced in its entirety with the following:

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

- E. **Section 3. General Provisions, D. Assignment**, is hereby replaced in its entirety with the following:

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. Any other assignment by a party shall require the written consent of the other party.

F. **Section 4, Intellectual Property Matters**, is hereby replaced in its entirety with the following:

Vendor is providing its commercially available services under the Contract. Unless expressly agreed to in writing, no custom work is authorized or payable under this Contract.

G. **Section 5. Terms and Conditions Applicable to State Agency Purchases Only, 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), Paragraph 2**, is hereby replaced in its entirety with the following:

Upon request and for products or services that may be subject to the State of Texas Accessibility requirements described in Section 5.A (1), Vendor may 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). Vendor acknowledges that if Vendor is unable to provide a VPAT that the applicable products or services may not be eligible for purchase under this Contract. Vendor and DIR will cooperate to assess whether Vendor's services are subject to such accessibility requirements in response to specific orders.

H. **Section 6. Contract Fulfillment and Promotion, A. Service, Sales, and Support of the Contract**, is hereby replaced in its entirety with the following:

Vendor shall make service, sales, and support resources available to serve all Customers throughout the State that enter into mutual agreements with Vendor. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use commercially reasonable efforts to ensure that potential Customers are made aware of the existence of the Contract, which obligation can be satisfied by compliance with Subsection B, below.

I. **Section 6. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, Subsection 1) Vendor Webpage**, is hereby replaced in its entirety with the following

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

- a) the services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) contact information for Vendor;



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- f) instructions for obtaining quotes and placing Purchase Orders;
- g) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- h) a link to the DIR "Cooperative Contracts" webpage; and
- i) 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.

- J. **Section 6. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, 5) Use of Access Data Prohibited** is hereby replaced in its entirety with the following:

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 without specific advance written consent of the relevant Customer. 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.

- K. **Section 6. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, 6) Responsibility for Content** is hereby restated:

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website specific to the Contract. DIR reserves the right to require a change of listed content on the sections of Vendor's website specific to the Contract if, in the reasonable opinion of DIR, it does not adequately represent the Contract provided that DIR may not require a change to any content related to the Vendor's website terms unrelated to the Contract.

- L. **Section 6. Contract Fulfillment and Promotion, C. Services Warranty, and Return Policies**, is hereby restated:

Vendor and Order Fulfiller will adhere to the Vendor's then-currently published policies concerning services warranties. Such policies for Customers will, at minimum, be in accordance with Vendor's standard warranty provisions in Appendix E.

- M. **Section 7. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, 1)** is hereby replaced in its entirety with the following:

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

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

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For the purposes of this Contract, Customer Price = MSRP. Vendor pays the Administrative Fee separately based on the Customer Price calculated as follows: Customer Price x DIR Administrative Fee, as set forth in the Contract.

- N. **Section 7. Pricing, Purchase Orders, Invoices, and Payments, D. Shipping, and Handling Fees,** is hereby replaced in its entirety with the following:

**RESERVED.**

- O. **Section 7. Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices,** is hereby replaced in its entirety with the following:

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. If Vendor does not reduce its pricing for the relevant product or service, DIR may notify customers and/or potential customers that the products or services in question are not authorized for purchase under the DIR contract. Alternatively, DIR may terminate the contract.

- P. **Section 7. Pricing, Purchase Orders, Invoices and Payments, H. Purchase Orders,** is hereby replaced in its entirety with the following:

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; provided, that additional terms and conditions contained in Purchase Orders will not be binding on Vendor unless accepted by Vendor in writing. An Accurate Purchase Order shall consist of an AWS 12-digit Account Number, Customer contract number, Customer purchase order number, Customer name, name of person submitting the purchase order, and contract name/phone number/e-mail/and postal address of where to send invoices.

- Q. **Section 8. Contract Administration, B, Reporting and Administrative Fees, 1) Reporting Responsibility,** is hereby replaced in its entirety with the following:

a) Vendor shall be responsible for reporting all services purchased under the Contract to DIR. Vendor shall file with DIR 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 reasonably necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

- R. **Section 8. Contract Administration, B, Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, b)**, is hereby replaced in its entirety with the following:

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

- S. **Section 8. Contract Administration, C. Records and Audit**, is hereby replaced in its entirety with the following:

Vendor recognizes and agrees that nothing in any portion of this Section 8.C will in any way limit or define the right or authority of the State Auditor's Office to conduct its audits or investigations.

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 reasonably request relating to the agreement.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records in each case subject to entry of a non-disclosure agreement between Vendor and the relevant auditor as provided in Appendix F, Nondisclosure Agreement. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and

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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 resulting in material underpayment of the DIR Administrative Fee or material Vendor performance deficiencies under the agreement, DIR may invoice for the reasonable costs of the audit or investigation, 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 reasonable satisfaction that Vendor's calculation of DIR's administrative fee is correct.

5) (a) Nothing in this Section 8.C grants Customer or any entity the right to inspect or audit records solely related to any customer of Vendor that is not purchasing through this Contract. Customer and its auditors may only perform a walk-through or visit ("Visit") of Vendor's site locations if (1) information and documentation provided by Vendor (including, e.g., professional, industry standard security audits) are not reasonably sufficient assurances under the circumstances, or (2) DIR has reason to believe an emergency or fraudulent situation exists concerning AWS's performance under the Contract.

(b) "Upon reasonable advance written notice of not less than 10 business days, AWS will allow DIR's auditors or investigators to conduct a Visit of AWS site location(s) used to provide the services to Customers, provided that: (i) such Visit is reasonably designed to provide DIR or its auditors or investigators with information relating to Vendor's compliance under the Agreement; (ii) the Visit occurs at a time reasonably specified by Vendor in accordance with applicable AWS policies (including investigation and security policies); (iii) no more than ten DIR representatives who must be certified auditors, IT professionals, or senior management ("Visitors") may participate in the Visit, while under the supervision and escort of AWS personnel, and the Visit will be conducted in accordance with AWS's standard policies, provided that those policies may not in any way impede the purpose of the Visit. Visitors may not be employees, representatives or affiliates of Vendor's competitors; (iv) the Visit is performed during AWS's normal business hours; (v) each auditor or investigator signs a non-disclosure agreement as provided in Appendix F, Nondisclosure Agreement; (vi) the Visit is conducted in a way that avoids any unreasonable or unnecessary disruption to AWS's operations; and (vii) all Services or features of AWS not being provided to DIR or its Customers, including "pre-release," "alpha," or "beta" services or features designated as such by AWS will not be part of the Visit. None of the foregoing limitations may in any way impede the purpose of the Visit."

T. **Section 9, Vendor Responsibilities, A. Indemnification**, is hereby replaced in its entirety with the following:

- 1) **INDEPENDENT CONTRACTOR.** VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.
- 2) **Acts or Omissions.** Moving IT infrastructure to Amazon Web Services creates a shared responsibility model between the Customer and AWS. AWS operates, manages, and controls the components from the host operating system and virtualization layer down to the physical security of the facilities in which the services operate. In turn, the Customer assumes responsibility and management of the guest operating system (including updates and security patches), other associated application software as well as the configuration of the AWS-provided security group firewall. AWS offers Customers with flexibility in terms of, for example, backups, archiving, disaster recovery, and data security needs, enabling Customers to customize their use of the services. Vendor shall indemnify and hold harmless the State of Texas and its OFFICERS FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS ("THIRD PARTY CLAIMS"), AND ALL RELATED THIRD PARTY CLAIM COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any negligent acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### 3) Infringements

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

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

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

- 4) **PROPERTY DAMAGE.** CUSTOMERS ARE RESPONSIBLE FOR ARCHITECTING THEIR SOLUTIONS AS DESIRED BASED ON, FOR EXAMPLE, THE SENSITIVITY OR IMPORTANCE OF THE CONTENT BEING PLACED ON THE SERVICES. THIS PERMITS CUSTOMERS TO ARCHITECT THEIR DATA IN A WAY THAT MINIMIZES AGAINST DATA LOSS OR OTHER PROPERTY DAMAGE. CUSTOMERS SHOULD UTILIZE DISASTER RECOVERY PROCEDURES, WHICH MAY INCLUDE UTILIZATION OF REDUNDANCY ACROSS MULTIPLE REGIONS OR OTHER PROCEDURES DISCUSSED ON THE AWS DISASTER RECOVERY SITE. 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. VENDOR SHALL NOT BE LIABLE FOR ANY PROPERTY LOSS OR DAMAGE WHERE THE CUSTOMER COULD HAVE REASONABLY PROTECTED AGAINST THE LOSS OR DAMAGE BY UTILIZING REASONABLE, INDUSTRY-ACCEPTED DISASTER RECOVERY STRATEGIES THAT WERE AVAILABLE TO THE CUSTOMER VIA AWS.

**U. Section 9, Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE** is hereby replaced in its entirety with the following:

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

**2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE**

INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- V. **Section 9. Vendor Responsibilities, C. Vendor Certifications, Subsection ix**, is hereby replaced in its entirety:

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. The State of Texas expressly acknowledges that AWS, in its capacity as a commercial services provider, does not purchase products or materials in its performance of this Contract;

- W. **Section 9. Vendor Responsibilities, C. Vendor Certifications, Subsection x**, is hereby replaced in its entirety with the following:

**RESERVED.**

- X. **Section 9. Vendor Responsibilities, C. Vendor Certifications**, the last paragraph is replaced in its entirety with the following:

In addition, Vendor understands and agrees that, if Vendor responds to certain Customer pricing requests or Statements of Work, certain individual Customers may require Vendor to comply with additional terms and conditions or certifications due to state and federal law (e.g., privacy and security requirements). Such additional terms and conditions or certifications, if any, are subject to mutual agreement between the individual Customer and Vendor.

- Y. **Section 9. Vendor Responsibilities, F. Use of Subcontractors**, is hereby replaced in its entirety with the following:

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract. Subcontractors will not be deemed to include Vendor's corporate affiliates.



**Z. Section 9. Vendor Responsibilities, G. Responsibility for Actions, Subsection 2)** is hereby restated:

Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 17 of Appendix A to the RFO and/or Section 9.C. (xi) and (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.

**AA. Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel** is hereby restated:

Unless specifically agreed to in writing, Vendor shall not provide any on-premises work for Customers. If Vendor chooses to accept Purchase Orders from Customers requiring on-premises work, then 1) Vendor may be subject to additional terms and conditions governing the protection of Customer data, files and/or materials ("Data") and 2) Vendor shall use their best efforts to preserve the safety, security, and 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 damages to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors working onsite. 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.

**BB. Section 9. Vendor Responsibilities, J. Background and/or Criminal History Investigation,** is hereby replaced in its entirety with the following:

Some Customers require that prior to commencement of certain 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 requested by certain Customers having legislative authority to require such investigations. If Vendor wishes to contract with these Customers, Vendor shall permit the background and/or criminal history investigation of its employees who will be supporting the Contract and 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 referenced in this Section, then Customer may immediately and without penalty terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

**CC. Section 9. Vendor Responsibilities, K. Limitation of Liability,** is hereby replaced in its entirety with the following:

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 of Texas, 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 aggregate liability for damages of any kind under the Contract other than for claims for third party patent, trademark or copyright infringement ("IP Claims") shall be limited to the lesser of: (A) thirty-six times the average monthly amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action; or (B) \$20,000,000. Vendor's aggregate liability under the Contract for IP Claims shall not exceed \$15,000,000. CUSTOMERS SHOULD EVALUATE THEIR RISK FOR EACH PURCHASE: IF NEEDED, CUSTOMERS MAY NEGOTIATE HIGHER LIMITATIONS OF LIABILITY.

**DD. Section 9. Vendor Responsibilities, N. Required Insurance Coverage**, is hereby replaced in its entirety with the following:

If and when the Vendor performs services that require Vendor's employees to perform work at any Customer premise and/or use employee vehicles, then this section would apply.

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within five (5) 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. All required insurance must be issued by companies that are, and duly licensed, admitted, and authorized to do business in the State of Texas. DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

#### **1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C, as noted further below including products/completed operations, where appropriate, with a separate aggregate of \$2,000,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

#### **2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers'

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

Liability of \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury disease policy limit and \$1,000,000 per disease per employee.

### 3) Business Automobile Liability Insurance

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

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination.

EE. **Section 9. Vendor Responsibilities, T. Deceptive Trade Practices; Unfair Business Practices**, is hereby replaced in its entirety with the following:

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

FF. **Section 9. Vendor Responsibilities, U. Drug Free Workplace Policy**, is hereby replaced in its entirety with the following:

Vendor promotes a drug-free work environment. The use or possession of illegal drugs or inappropriate use of prescription drugs by Vendor employees while at work or engaged in work-related activities is prohibited. Violation of this policy by Vendor employees may lead to discipline, up to and including termination. If a Customer has additional restrictions relating to drug free workplace requirements, Vendor shall comply with the additional requirements if Vendor wishes to contract with these Customers.

GG. **Section 10. Contract Enforcement, A. Enforcement and Contract Dispute Resolution, 1)** is hereby replaced in its entirety with the following:

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 or any successor statute, 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.

- HH. **Section 10. Contract Enforcement, B. Termination, 3) Termination for Convenience**, is hereby replaced in its entirety with the following:

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. Such termination will be in accordance with Section 7 of Appendix E.

- II. **Section 10. Contract Enforcement, B. Termination, 4) Termination for Cause**, is hereby replaced in its entirety with the following:

**a. Contract**

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

**b. Purchase Order**

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

**c. Service Agreements**

Agreements between Customers and Vendor may be terminated in accordance with terms in the Service Agreement or as agreed between Vendor and Customer.

DIR Contract No. DIR-TSO-4221

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

- JJ. **Section 10. Contract Enforcement, B. Termination, 5) Immediate Termination or Suspension**, is hereby replaced in its entirety with the following:

DIR may immediately terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor (whether or not such potential violations directly impact the provision of goods or services under this Contract). Such termination will be in accordance with Section 7 of Appendix E. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to Vendor within five (5) business days after imposing the termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review Vendor's presentation, but is under no obligation to provide a formal response.

- KK. **Section 10. Contract Enforcement, D. Temporary Suspension**, is hereby added:

Notwithstanding any other provision of this Contract, Vendor may suspend service to Customer in accordance with Appendix E, Service Agreement or as otherwise agreed between Vendor and Customer.

- LL. **Section 11. Notification, A. Notices**, is hereby replaced in its entirety with the following:

Except as provided in Section 6 of the Contract, 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.

DIR Contract No. DIR-TSO-4221

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

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

**Amazon Web Services, Inc.**

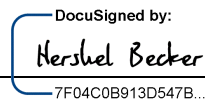
Authorized By:  DocuSigned by:  
Shannon Lowther  
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Name: Shannon Lowther

Title: Authorized Representative

Date: October 19, 2018

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

Authorized By:  DocuSigned by:  
Hershel Becker  
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Name: Hershel Becker

Title: Chief Procurement Officer

Date: 10/30/2018 | 4:20 PM CDT

Office of General Counsel:  10/30/2018 | 4:19 PM CDT

**Appendix A:**  
**Standard Terms and Conditions for Services Contracts**

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## Appendix A: Standard Terms and Conditions for Services Contracts

### 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.

**Appendix A:**  
**Standard Terms and Conditions for Services Contracts**

- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** – shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. 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.

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

**Appendix A:**  
**Standard Terms and Conditions for Services Contracts**

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 five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality; and indemnification will remain in effect after termination or expiration hereof.

**F. Choice of Law**

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

**G. Limitation of Authority**

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

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### 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

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the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

**D. Waiver of Moral Rights.**

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

**E. Confidentiality.**

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under subparagraph 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



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may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

#### **G. Return of Materials Pertaining to Work Product.**

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

#### **H. Vendor License to Use.**

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

#### **I. Third-Party Underlying and Derivative Works.**

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

#### **J. Agreement with Subcontracts.**

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

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grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

### **K. License to Customer.**

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

### **L. Vendor Development Rights.**

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

## **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 Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

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

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

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 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



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government purchasing cooperative).

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

**3)** Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 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 of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;

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- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- l) the DIR logo in accordance with the requirements of this Section.

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

### **2) Accurate and Timely Contract Information**

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

### **3) Webpage Compliance Checks**

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

### **4) Webpage Changes**

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

### **5) Use of Access Data Prohibited**

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

### **6) Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of

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listed content if, in the opinion of DIR, it does not adequately represent the Contract.

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

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

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### 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.

## 7. Pricing, Purchase Orders, Invoices, and Payments

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A-F, H-J**

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

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

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

### B. Customer Discount

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

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

### C. Customer Price

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

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

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

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

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

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purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended days to reflect the lower price.

### **D. Shipping and Handling Fees**

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

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

### **E. Tax-Exempt**

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

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

### **F. Travel Expense Reimbursement**

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

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

### **G. Changes to Prices**

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

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

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### H. Purchase Orders

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

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. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

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

### I. Invoices

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

1) Invoices shall be submitted by the Vendor 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. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to 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.

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

### J. Payments

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

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

## 8. Contract Administration

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

### A. Contract Managers

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

DIR and the Vendor will each provide a Contract Manager to support the Contract.



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Information regarding the Contract Managers will be posted on the Internet website designated for the Contract.

### **1) State Contract Manager**

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

### **2) Vendor Contract Manager**

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between 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 if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

## **B. Reporting and Administrative Fees**

### **1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all 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. 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 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.

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**3) Historically Underutilized Businesses Subcontract Reports**

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

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

**4) DIR Administrative Fee**

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

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

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

**5) Accurate and Timely Submission of Reports**

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

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

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



## Appendix A: Standard Terms and Conditions for Services Contracts

### 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 or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor 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, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.
- 4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Vendor through the

## Appendix A: Standard Terms and Conditions for Services Contracts

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 OR THE STATE OF TEXAS.

##### **2) Acts or Omissions**

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

##### **3) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third-

## **Appendix A: Standard Terms and Conditions for Services Contracts**

party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

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

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

### **4) PROPERTY DAMAGE**

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

### **B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**

**1)** VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND

## Appendix A: Standard Terms and Conditions for Services Contracts

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

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

### C. Vendor Certifications

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

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

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

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**Standard Terms and Conditions for Services Contracts**

- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) 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;

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- (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.

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

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

### D. Ability to Conduct Business in Texas

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

Vendor and its Order 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 Organizations Code, Title 1, Chapter 9.

### E. Equal Opportunity Compliance

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

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



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### F. Use of Subcontractors and Designation of Order Fulfillers

**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.

Vendors who submit Order Fulfillers must indicate whether (a) the Order Fulfiller(s) will provide sales and marketing of the Vendor's services only or (b) the Order Fulfiller(s) will provide technical services in addition to sales and marketing of the Vendor's services. If Vendor wishes to engage additional Order Fulfiller(s) to provide technical services after Contract execution, Vendor must submit the qualifications of Order Fulfiller(s) to the DIR Contract Manager for approval (in addition to meeting HUB requirements) prior to inclusion of such Order Fulfiller.

### G. Responsibility for Actions

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

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under the Certification Statement of Exhibit A to the RFO and/or Section 9.C. (x), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

### H. Confidentiality

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

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are 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



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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 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.

### **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 subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such, 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)

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communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

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

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

#### **1) Commercial General Liability**

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

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

#### **2) Workers' Compensation Insurance**

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

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favor of DIR and/or Customer:

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

### O. Use of State Property

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

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

### P. Immigration

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

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

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

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

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

### Q. Public Disclosure

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

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

## Appendix A: Standard Terms and Conditions for Services Contracts

### **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 (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

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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 TO A, B2, 5-7.**

### A. Enforcement of Contract and Dispute Resolution

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

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

3) State agencies are required by rule (34 TAC §20.1115) 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**

#### 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 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

## Appendix A: Standard Terms and Conditions for Services Contracts

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 will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

### **2) Absolute Right**

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

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

### **3) Termination for Convenience**

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

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

#### **a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing services



## **Appendix A: Standard Terms and Conditions for Services Contracts**

under the Contract have no power to terminate the Contract for default.

### **b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 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 (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

### **6) Customer Rights Under Termination**

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.



**Appendix A:**  
**Standard Terms and Conditions for Services Contracts**

**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. 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

**12. Captions**

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

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

## DIR-TSO-4221 HUB Subcontracting Plan

Rev. 2/17



# 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), 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 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.





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# 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) §20.284 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 §20.285(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: Amazon Web Services, Inc. State of Texas VID #: 1249380681  
 Point of Contact: Charlie Thomas Phone #: 916-872-3490  
 E-mail Address: cpthomas@amazon.com Fax #: 509-847-7899
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Requisition #: DIR-TSO-TMP-266 Bid Open Date: 3/23/2017

(mm/dd/yyyy)



Enter your company's name here: Amazon Web Services, Inc.Requisition #: DIR-TSO-TMP-266**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 and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, 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 and services. (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 do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
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 <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

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 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: Amazon Web Services, Inc.Requisition #: DIR-TSO-TMP-266**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 do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	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 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: Amazon Web Services, Inc.Requisition #: DIR-TSO-TMP-266

**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. .

Amazon Web Services, Inc. will be offering its commercially available services under the contract. These services are currently provided to a broad base of customers and any customers accessing the services under this contract will benefit from the same equipment, personnel, etc. we use for our commercial customers.

With respect to the administrative requirements, such as reports to the Department of Information Resources and trade show participation, Amazon Web Services personnel includes a public sector sales and management team which will address these requirements as part of their duties

#### 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 <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.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.

**Doug VanDyke****9/27/2017****Authorized Representative**

Signature

Printed Name

Title

Date  
(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.













# 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, §20.285 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 §20.282(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**. N/A

## SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: Amazon Web Services, Inc.

State of Texas VID #: 1249380681

Point-of-Contact:

Phone #: 916-872-3490

E-mail Address: cpthomas@amazon.com

Fax #: 509-847-7899

## SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name:

Point-of-Contact:

Phone #:

Requisition #: DIR-TSO-TMP-266

Bid Open Date: 3/23/2017

(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 §20.285, 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, §20.282(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



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

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Enter your company's name here: Amazon Web Services, Inc.Requisition #: DIR-TSO-TMP-266

**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 <https://www.comptroller.texas.gov/purchasing/docs/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 <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

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.

- 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/passcmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- 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

- 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 <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

- 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. 2/17

Enter your company's name here: Amazon Web Services, Inc.Requisition #: DIR-TSO-TMP-266**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.



**DIR-TSO-4221**  
**Appendix C- Pricing Index**  
**Amazon Web Services (AWS)**

<b>Infrastructure as a Service</b>		<b>Customer Discount (includes DIR Administrative Fee)</b>
<b>Brand</b>	<b>Service Description</b>	
Amazon Web Services (AWS)	ALL Infrastructure as a Services	0.00%
<b>Platform as a Service</b>		<b>Customer Discount (includes DIR Administrative Fee)</b>
<b>Brand</b>	<b>Service Description</b>	
Amazon Web Services (AWS)	ALL Platform as a Services	0.00%
<b>Related Services Description</b>	<b>Customer Discount (includes DIR Administrative Fee)</b>	
AWS Basic Support (IaaS/PaaS)	Included with all AWS Services	
AWS Developer Support (IaaS/PaaS)	Greater of \$29/month or 3% of monthly AWS usage	
AWS Business Support (IaaS/PaaS)	Greater of \$100 or 10% of monthly AWS usage for the first \$0-\$10K 7% of monthly AWS usage from \$10K-\$80K 5% of monthly AWS usage from \$80K-\$250K 3% of monthly AWS usage from \$250K+	
AWS Enterprise Support (IaaS/PaaS)	Greater of \$15,000 or 10% of monthly AWS usage for the first \$0-\$150K 7% of monthly AWS usage from \$150K-\$500K 5% of monthly AWS usage from \$500K-\$1M 3% of monthly AWS usage over \$1M	

**Contract DIR-TSO-4221**  
**Appendix D, Statement of Work**

**Department of Information Resources**

**Cloud Services Contract**

**Sample Statement of Work**

**STATEMENT OF WORK (SOW)  
FOR  
CLOUD SERVICES**

***Project Name***

***DIR Customer Name***

***DATE***



## 1.0 Purpose

This Statement of Work describes the Cloud Services to be delivered to *[Department/Agency]* with regard to *[application name]*.

## 2.0 Background/Objective

Given the growing significance and maturity of Cloud Services, the Texas Department of Information Resources (DIR) issued a Cloud Services RFO to contract cloud providers for customer use. Cloud computing is a model for enabling available, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services). Cloud Services are generally expected to offer reduced cost and increased efficiency for government organizations.

The *[Department/Agency]* seeks cloud services to *[explain customer problem or reason for seeking cloud services]*. *[Provide useful information regarding the Customer organization, project history, future plans or any other relevant information regarding the work to be performed.]*

## 3.0 Scope

The overarching goal of this SOW is to provide *[Department/Agency]* the ability to take advantage of rapidly developing offerings and changing price models in Cloud Services.

The scope focuses on offering *[type of cloud service e.g., IAAS, PAAS, cloud broker]* for the following activities:

- *[List all application activities requiring cloud services, e.g., Cloud Storage Services, Virtual Machines]*

## 4.0 Requirements

The requirements focus on the *[type of cloud service offering]* and are divided into the following categories:

- General Cloud Computing Requirements – specifies general requirements for cloud services
- Common Technical Requirements – specifies the technical requirements for enabling *[type of cloud service]* offering
- Specific Application Technical Requirements – specifies the requirements for service offerings described in SOW

The *[Department/Agency]* retains ownership of any user created/loaded data and applications hosted on vendor’s infrastructure, and maintains right to request full copies of these at any time.

**4.1 General Cloud Computing Requirements**

The Vendor shall provide a Cloud Computing solution that aligns to the following general cloud computing requirements as described in Table 1 below.

Table 1: General Cloud Computing Requirement

Cloud Characteristic	Definition	General Requirement

**4.2 Common Technical Requirements**

The Vendor shall provide a solution that aligns to the following technical requirements as described in Table 2 below. (List provided is not all inclusive)

***Service Management and Provisioning Requirements***

Cloud Characteristic	List of Requirements
<i>Service Provisioning</i>	
<i>Service Level Agreement Management</i>	
<i>Operational Management</i>	
<i>DR and COOP</i>	



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<b>Cloud Characteristic</b>	<b>List of Requirements</b>
<i>Data Management</i>	

**User/Admin Portal Requirements**

<b>Cloud Characteristic</b>	<b>List of Requirements</b>
<i>Order Management</i>	
<i>Billing/Invoice Tracking</i>	
<i>Utilization Monitoring</i>	
<i>Trouble Management</i>	
<i>User Profile Management</i>	

**Integration Requirements**

<b>Cloud Characteristic</b>	<b>List of Requirements</b>
<i>Application Programming Interfaces (APIs)</i>	

**Data Center Facilities Requirements**

<i>Internet Access</i>	
<i>Firewalls</i>	
<i>LAN/WAN</i>	
<i>Data Center Facilities</i>	1.

### 4.3 Specific Application Technical Requirements

List all requirements specific to application (e.g., storage requirements, bandwidth tiers, virtual machine requirements, bundling options,

### 5.0 Compliance Requirements

#### 5.1 Accessibility Requirements – list all accessibility requirements

#### 5.2 Security Requirements – list all security requirements

#### 5.3 Privacy Requirements – list all privacy requirements

### 6.0 Reporting Deliverables

Below is an example list of deliverables that might be required by customer.

Report / Deliverable	Description	Frequency
<b>Service Level Agreement (SLA)</b>	<ul style="list-style-type: none"><li>• Service Availability (Measured as Total Uptime Hours / Total Hours within the Month) displayed as a percentage of availability up to one-tenth of a percent (e.g. 99.5%)</li><li>• Text description of major outages (including description of root-cause and fix) resulting in greater than 1-hour of unscheduled downtime within a month</li></ul>	Monthly
<b>Help Desk / Trouble Tickets</b>	<ul style="list-style-type: none"><li>• Number of Help Desk/customer service requests received.</li><li>• Number of Trouble Tickets Opened</li><li>• Number of trouble tickets closed</li><li>• Average mean time to respond to Trouble</li></ul>	Monthly

	Tickets (time between trouble ticket opened and the first contact with customer) <ul style="list-style-type: none"> <li>• Average mean time to resolve trouble ticket</li> </ul>	
<b>Service Orders / Sales</b>	<ul style="list-style-type: none"> <li>• Quantity and Type of IaaS/PaaS service orders received</li> <li>• Number of service orders (and percentage of orders out of the total) which resulted in an email or contact with customer within two hours of individual task order(s) issued under this BPA being sent to vendor</li> </ul>	Monthly
<b>Service Utilization</b>	<ul style="list-style-type: none"> <li>• Monthly utilization of each IaaS/PaaS Service type (Lot) as defined by the Service Units for the specific Lot offered by the vendor</li> </ul>	Monthly
<b>Invoicing/Billing</b>	<ul style="list-style-type: none"> <li>• Standard invoicing/billing</li> </ul>	Monthly

## 7.0 Additional Customer Terms and Conditions

List any additional terms and conditions required by the Customer. Customers may negotiate the terms and conditions of a SOW to suit their business needs so long as the SOW terms and conditions do not conflict or weaken the DIR master contract.

## 8.0 Pricing

The main purpose of this section is to detail the pricing for the cloud services. Vendor should also provide a summary of any assumptions and exclusions.

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**Sample Pricing Sheet**

Cloud Service	Agency/Department Application Name	Price

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\_\_\_\_\_

The undersigned signatories represent and warrant that they have full authority to enter into this Statement of Work on behalf of the respective parties. The Effective Date of this SOW shall be the date of the last party to sign.

**Customer Agency**

**Cloud Service Provider (Vendor)**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

Legal: \_\_\_\_\_





**Appendix E to DIR Contract Number DIR-TSO-4221 ("DIR CONTRACT")**

**AWS Customer Agreement**

**Amazon Web Services, Inc.  
Texas Department of Information Resources**

**(Cover Page)**

This AWS Enterprise Customer Agreement (this "**Agreement**") is made and entered into by and between Amazon Web Services, Inc., a Delaware corporation ("**AWS**") and the customer specified on this Cover Page ("**Customer**"). The Agreement is entered pursuant to, and subject to, DIR Contract Number DIR-TSO-4221 ("DIR Contract").

This Agreement consists of this Cover Page and the Terms and Conditions attached as Attachment A. In consideration of the mutual promises contained in this Agreement, AWS and Customer agree to all terms of the Agreement effective as of the date the last party signs this Agreement (the "**Effective Date**").

<b>AMAZON WEB SERVICES, INC.</b> <b>By:</b> _____ <b>Name:</b> _____ <b>Title:</b> _____ <b>Signature Date:</b> _____  <b>Address:</b>  <b>410 Terry Avenue North</b> <b>Seattle, WA 98109-5210</b> <b>Attention: General Counsel</b> <b>Fax: 206-266-7010</b>	<b>Customer Name:</b> [ _____ ] <b>By:</b> _____ <b>Name:</b> _____ <b>Title:</b> _____ <b>Signature Date:</b> _____  <b>Address:</b>  _____ _____ <b>Attention:</b> _____ <b>Fax:</b> _____
---	---

**ATTACHMENT A: Terms and Conditions****1. Use of the Service Offerings**

**1.1 Generally.** Customer may access and use the Service Offerings in accordance with this Agreement. Service Level Agreements may apply to certain Service Offerings. Customer will adhere to all laws, rules, and regulations applicable to Customer's use of the Service Offerings, including the Service Terms, the Acceptable Use Policy and the other Policies as defined in Section 13. While Customer is accessing the Service Offerings under the Texas Department of Information Resources Cooperative Contracts Program (the "**DIR Program**"), Customer will only access or use Service Offerings that are included in the DIR Program ("**Program Services**").

**1.2 AWS Account.** To access the Services, Customer must create one or more accounts, each associated with a valid e-mail address. Unless explicitly permitted by the Service Terms, Customer will only create one account per email address. Customer will identify to AWS all accounts to be covered by this Agreement. Customer is responsible for all activities that occur under its accounts (including the use of Services that are not Program Services), regardless of whether the activities are undertaken by Customer, its employees or a third party (including contractors or agents) and, except to the extent caused by AWS's breach of this Agreement, AWS and its Affiliates are not responsible for unauthorized access to Customer's accounts. Customer may terminate any of its accounts and this Agreement at any time in accordance with Section 7. For clarification and as described in Section 12.12, this Agreement supersedes any acceptance by Customer or any of its employees (on behalf of Customer) of the AWS Customer Agreement in connection with all accounts identified by Customer to AWS as accounts to be covered by this Agreement as described in this Section 1.2. To the extent that an account is not identified as an account to be covered by this Agreement, that account will be governed by the AWS Customer Agreement.

**1.3 Support.** If Customer would like support for the Services other than the support AWS generally provides to other users of the Services without charge, Customer may enroll for customer support in accordance with the terms of the AWS Support Guidelines.

**1.4 Third Party Content.** Third Party Content may be made available directly to Customer through the AWS Site or in connection with the Services. This content may be governed by separate terms and conditions, including separate fees and charges. Because AWS may not have tested or screened the Third Party Content, Customer's use of such content is at Customer's sole risk.

**1.5 Customer Affiliates.** Any Customer Affiliate may use the Service Offerings under the terms of this Agreement by executing an addendum to this Agreement with AWS, as mutually agreed by AWS and the Customer Affiliate.

**2. Changes**

**2.1 To the Service Offerings.** AWS may change or discontinue any of the Service Offerings (including the Service Offerings as a whole) or change or remove features or functionality of the Service Offerings from time to time. AWS will provide at least 6 months prior notice to any Customer AWS accounts (identified by Customer to AWS as described in Section 1.2) enrolled in AWS Support at the Developer-level tier or above (or any successor service providing such communications alerts) if AWS knowingly discontinues a Service or functionality of a Service that it makes generally available to its customers, except that AWS may not provide such notice if necessary to (a) address an emergency or threat to the security or integrity of AWS, (b) respond to claims, litigation, or loss of license rights related to third party intellectual property rights, or (c) comply with the law or requests of a government entity.

**2.2 To the Service Level Agreements.** AWS may change, discontinue, or add Service Level Agreements from time to time, but will provide 60 days advance notice to Customer before materially reducing the benefits offered to Customer under the Service Level Agreements.

**3. Security and Data Privacy**

**3.1 AWS Security.** Without limiting Section 10.3 or Customer's obligations under Section 4.2, AWS will implement reasonable and appropriate measures for the AWS Network (as determined by AWS) designed to help Customer secure Customer Content against accidental or unlawful loss, access or disclosure.

**3.2 Data Privacy.** AWS participates in the safe harbor programs described in the Privacy Policy. Customer may specify the AWS regions in which Customer Content will be stored and accessible by End Users. AWS will not move Customer Content from the selected AWS regions without notifying Customer, unless required to comply with the law or requests of a governmental or regulatory body (including subpoenas or court orders). Customer consents to AWS's collection, use and disclosure of information associated with the Service Offerings in accordance with the Privacy Policy, and to the processing of Customer Content in, and transfer of Customer Content into, the AWS regions Customer selects.

**3.3 Disclosure of Customer Content.** Without modifying or expanding AWS's obligations under Section 3.1, AWS will not use or disclose Customer Content, except as necessary to provide the Service Offerings to Customer and any End Users in accordance with the Documentation or to comply with the law or requests of a governmental or regulatory body (including subpoenas or court orders). AWS will give Customer reasonable notice of a request of a governmental or regulatory body to allow Customer to seek a protective order or other appropriate remedy (except to the extent AWS's compliance with the foregoing would cause it to violate a court order or other legal requirement).

## **4. Customer Responsibilities**

**4.1 Customer Content.** Customer will ensure that none of Customer Content, Customer Submissions or End Users' use of Customer Content, Customer Submissions or the Service Offerings will violate the Acceptable Use Policy, the other Policies or applicable law. Further, Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content and Customer Submissions. For example, Customer is solely responsible for:

- (a) the technical operation of Customer Content, including ensuring that calls Customer makes to any Service are compatible with then-current APIs for that Service;
- (b) any claims relating to Customer Content or Customer Submissions; and
- (c) properly handling and processing notices that are sent to Customer (or any Customer Affiliate) by any person claiming that Customer Content or Customer Submissions violate such person's rights,

including notices pursuant to the Digital Millennium Copyright Act.

**4.2 Other Security and Backup.** Customer is responsible for properly configuring and using the Service Offerings and taking steps to maintain appropriate security, protection, and backup of Customer Content, which may include use of encryption technology to protect Customer Content from unauthorized access and routine archiving of Customer Content. AWS log-in credentials and private keys generated by the Services are for Customer's internal use only and Customer may not sell, transfer or sublicense them to any other entity or person, except that Customer may disclose its private key to its agents and subcontractors performing work on behalf of Customer.

**4.3 End User Violations.** Customer is responsible for End Users' use of Customer Content and the Service Offerings. Customer will ensure that all End Users comply with Customer's obligations under this Agreement and that the terms of its agreement with each End User are consistent with this Agreement. If Customer becomes aware of any violation of its obligations under this Agreement by an End User, Customer will immediately terminate such End User's access to Customer Content and the Service Offerings.

**4.4 End User Support.** Customer is responsible for providing customer service (if any) to End Users. AWS does not provide any support or services to End Users unless AWS has a separate agreement with Customer or an End User obligating AWS to provide support or services.

## **5. Fees and Payment**

**5.1 Service Fees.** Unless otherwise stated on the AWS Site, AWS will invoice Customer at the end of each month for all applicable fees and charges accrued for use of the Service Offerings, as described on the AWS Site, during the month. Customer will pay AWS all amounts due under an invoice (other than amounts disputed by Customer in good faith as ("Disputed Amounts")) in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251. For any Disputed Amounts, Customer will provide the basis for the dispute (including any supporting documentation) and the parties will meet within 30 days to resolve the dispute. If the parties fail to resolve the dispute within such 30 day period, AWS may, at its option, either (a) suspend Customer's or any End User's right to access or use any portion of

or all of the Service Offerings immediately upon notice to Customer or (b) terminate this Agreement immediately upon notice to Customer. Fees and charges for any new Service or new feature of a Service will be effective when AWS posts updated fees and charges on the AWS Site, unless expressly stated otherwise in a notice. AWS may increase or add new fees and charges for any existing Service by giving Customer at least 60 days' advance notice. AWS may charge Customer interest in accordance with the Texas Prompt Payment Act.

**5.2 Taxes.** Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by Customer are exclusive of applicable taxes and duties, including, without limitation, VAT, GST, excise taxes, sales and transactions taxes, and gross tax receipts ("Indirect Taxes"). AWS may charge and Customer will pay applicable Indirect Taxes that AWS is legally obligated or allowed to collect from Customer. Customer will provide such information to AWS as reasonably required to determine whether AWS is obligated to collect Indirect Taxes from Customer. AWS will not collect, and Customer will not pay, any Indirect Tax for which Customer furnishes AWS a properly completed exemption certificate or a direct payment permit certificate for which AWS may claim an available exemption from such Indirect Tax. All payments made by Customer to AWS under this Agreement will be made free and clear of any withholding or deduction for taxes. If any such taxes (for example, international withholding taxes) are required to be withheld on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by AWS is equal to the amount then due and payable under this Agreement. To claim a tax exemption, Customer is required to enroll in the Amazon Tax Exemption Program. This can currently be done by uploading the tax exemptions document(s) to the Customer's AWS account. Specific program instructions are currently located at [http://www.amazon.com/gp/help/customer/display.html/ref=hp\\_left\\_sib?ie=UTF8&nodeId=201133370](http://www.amazon.com/gp/help/customer/display.html/ref=hp_left_sib?ie=UTF8&nodeId=201133370).

## 6. Temporary Suspension

**6.1 Generally.** AWS may suspend Customer's or any End User's right to access or use any portion of or all of the Service Offerings immediately upon notice to Customer if AWS determines:

(a) Customer's or an End User's use of the Service Offerings (i) poses a security risk to the Service Offerings or any third party, (ii) may adversely impact AWS's systems, the Service Offerings or the systems or Content of any other AWS customer, or (iii) may subject AWS, its Affiliates or any third party to liability;

(b) Customer or any End User is in breach of this Agreement, including if Customer is delinquent on its payment obligations relating to undisputed payment amounts for more than 30 days;

(c) Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Customer's assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

**6.2 Effect of Suspension.** If AWS suspends Customer's right to access or use any portion of the Service Offerings:

(a) Customer remains responsible for all fees and charges Customer has incurred through the date of suspension;

(b) Customer remains responsible for any applicable fees and charges for any Service Offerings to which Customer continues to have access, as well as applicable data storage fees and charges and fees and charges for in-process tasks completed after the date of suspension;

(c) Customer will not be entitled to any service credits under the Service Level Agreements for any suspended service for the period of suspension; and

(d) AWS will not erase any Customer Content as a result of the suspension, except as specified elsewhere in this Agreement.

AWS's right to suspend Customer's or any End User's right to access or use the Service Offerings is in addition to AWS's right to terminate this Agreement pursuant to Section 7.2.

## 7. Term; Termination

**7.1 Term.** The term of this Agreement will commence on the Effective Date and will remain in

effect until terminated by Customer or AWS in accordance with this Agreement.

## 7.2 Termination.

(a) **Termination for Convenience.** Termination for Convenience is in accordance with Section 10B3 Appendix A, DIR Contract Number DIR Contract Number DIR-TSO-4221.

### (b) Termination for Cause

(i) **By AWS.** AWS may also terminate this Agreement upon 30 days advance notice to Customer: (A) for cause, if there is an act or omission by Customer or any End User that AWS has the right to suspend for under Section 6.1, or (B) in order to comply with applicable law or requests of governmental entities.

Additional Termination for Cause language in contained in Section 10B4 of Appendix A of DIR Contract Number DIR-TSO-4221.

## 7.3 Effect of Termination.

(a) **Generally.** Upon any termination of this Agreement:

(i) subject to subparagraph (iv) below, all of Customer's rights under this Agreement immediately terminate

(ii) Customer remains responsible for all fees and charges Customer has incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination;

(iii) Subject to its legal obligations for records retention, Customer will immediately return or, if instructed by AWS, destroy all AWS Content in Customer's possession; and

(iv) Sections 4.1, 5, 7.3, 8.1, 8.2, 8.5, 8.6, 9, 10.3, 11, 12 and 13 will continue to apply in accordance with their terms.

(b) **Post-Termination Assistance.** During the 30 days following termination:

(i) AWS will not erase any Customer Content as a result of the termination;

(ii) For any use of the Services after the termination date, the terms of this Agreement will apply during any applicable post-termination assistance period; and

(iii) Customer may retrieve Customer Content from the Services.

Any additional post-termination assistance from AWS is subject to mutual agreement of the parties. Customer will pay for any post-termination use of the Services, including applicable data storage fees. AWS will not be obligated to provide the post-termination assistance described in this Section where: (A) it is prohibited by law or the order of a governmental or regulatory body; (B) it may subject AWS to liability, or (C) Customer has not paid all amounts due under this Agreement, other than amounts disputed by Customer in good faith as evidenced by written documentation.

## 8. Proprietary Rights

**8.1 Customer Content.** As between Customer and AWS, Customer or Customer's licensors own all right, title, and interest in and to Customer Content. Except as provided in this Agreement, AWS obtains no rights under this Agreement from Customer or Customer's licensors to Customer Content.

**8.2 Customer Submissions.** Customer Submissions will be governed by the terms of the Apache License, Version 2.0, unless Customer specifies one of the other licenses supported by AWS at the time of submission. The Apache License, Version 2.0, is an open source software license that allows the user of the software the freedom to use the software for any purpose subject to the terms of the license (e.g., to distribute it, to modify it, and to distribute modified versions of the software). Customer Submissions are optional and Customers are not required to make Customer Submissions to use the Services.

**8.3 Reference to Customer.** Upon consent from Customer's account owner (which may be via email), AWS may use Customer's trade names, trademarks, service marks, logos, domain names and other distinctive brand features in presentations, marketing materials, and website listings (including links to Customer's website) for the purpose of advertising or publicizing Customer's use of the Service and Customer Submissions.

**8.4 Service Offerings License.** As between Customer and AWS, AWS, its Affiliates or its licensors own all right, title, and interest in and to the Service Offerings. Subject to the terms of this Agreement, AWS grants Customer a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following during the Term: (a) access



and use the Services solely in accordance with this Agreement; and (b) copy and use the AWS Content solely in connection with Customer's permitted use of the Services. Except as provided in this Section 8.4, Customer obtains no rights under this Agreement from AWS or its licensors to the Service Offerings, including any related intellectual property rights. Some AWS Content may be provided to Customer under a separate license, such as the Apache License, Version 2.0, in which case that license will govern Customer's use of that AWS Content.

**8.5 License Restrictions.** Neither Customer nor any End User may use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Customer nor any End User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Service Offerings (except to the extent software included in the Service Offerings are provided to Customer under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings, (c) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Service Offerings. During and after the Term, Customer will not assert, nor will Customer authorize, assist, or encourage any third party to assert, against AWS or any of its Affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Service Offerings Customer has used. Customer may only use the AWS Marks in accordance with the Trademark Use Guidelines. Customer will not misrepresent or embellish the relationship between AWS and Customer (including by expressing or implying that AWS supports, sponsors, endorses, or contributes to Customer or Customer's business endeavors). Customer will not imply any relationship or affiliation between AWS and Customer except as expressly permitted by this Agreement.

**8.6 Suggestions.** If Customer elects to provide any Suggestions to AWS or its Affiliates, AWS and its Affiliates will be entitled to use the Suggestions without restriction. Customer hereby irrevocably assigns to AWS all right, title, and interest in and to the Suggestions. This does not relieve AWS of any

obligation concerning confidentiality of Customer Content as provided under Section 3.

## **9. Customer Representations and Warranties.**

### **9.1 Customer Representations and Warranties.**

Customer represents and warrants that (i) Customer and any End Users' use of the Service Offerings (including any activities under a Customer Account and use by Customer's employees and personnel), Customer Content and Customer Submissions will not violate this Agreement or applicable law; (ii) Customer Content or Customer Submissions, the combination of Customer Content or Customer Submissions with other applications, content or processes, or the use, development, design, production, advertising or marketing of Customer Content or Customer Submissions, do not and will not infringe or misappropriate any third-party rights; and (iii) and Customer's use of the Service Offerings will not cause harm to any End Users. Nothing in this Appendix E Service Agreement is meant to confer rights to third parties outside of the DIR Contract DIR-TSO-4221.

**9.2 Process.** Subject to the discretion and agreement of the Office of the Attorney General, AWS may participate or observe in litigation or settlement negotiations concerning this Contract in matters related to AWS's interests.

## **10. Representations, Warranties, Disclaimers**

**10.1 AWS Warranties.** AWS will promptly notify Customer of any claim subject to Section 9.1, but AWS's failure to promptly notify Customer will only affect Customer's obligations under Section 9.1 to the extent that AWS's failure prejudices Customer's ability to defend the claim. Subject to Section 11, AWS represents and warrants to Customer that the Services will perform materially in accordance with the Documentation.

**10.2 Mutual Warranties.** Subject to Section 11, each party represents and warrants to the other that it will comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement.

### **10.3 Disclaimers.**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 (AWS WARRANTIES), THE SERVICE OFFERINGS ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 (AWS WARRANTIES), AWS, ITS AFFILIATES AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND,

WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERINGS OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING CUSTOMER CONTENT OR THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, AWS, ITS AFFILIATES AND ITS LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

## **11. Limitations of Liability.**

**11.1 Disclaimer.** IF ANY PARTY DEFAULTS IN ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND SUBJECT TO THE LIABILITY CAP IN SECTION 9.K OF APPENDIX A OF THE DIR CONTRACT, AS MODIFIED BY THE PARTIES, THE NON BREACHING PARTY WILL BE ENTITLED TO RECOVER FROM THE BREACHING PARTY ONLY THE ACTUAL AND DIRECT DAMAGES THAT THE NON BREACHING PARTY MAY INCUR ON ACCOUNT OF SUCH BREACH. NEITHER PARTY NOR ANY OF ITS RESPECTIVE AFFILIATES OR LICENSORS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING DAMAGES ASSOCIATED WITH: LOSS OF PROFITS OR GOOD WILL; UNAVAILABILITY OR NONPERFORMANCE OF ANY OR ALL OF THE SERVICES; INVESTMENTS, EXPENDITURES OR COMMITMENTS RELATED TO USE OR ACCESS TO THE SERVICE OFFERINGS; COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; UNAUTHORIZED ACCESS TO, COMPROMISE, ALTERATION OR LOSS OF CUSTOMER CONTENT; OR COST OF REPLACEMENT OR RESTORATION OF ANY LOST OR ALTERED CUSTOMER CONTENT.

**11.2 DAMAGES CAP.** NEITHER PARTY'S NOR ANY OF ITS RESPECTIVE AFFILIATES OR LICENSORS AGGREGATE LIABILITY WILL EXCEED THE AMOUNTS IDENTIFIED IN SECTION 9.K OF APPENDIX A OF THE DIR CONTRACT.

## **12. Miscellaneous**

**12.1 Nondisclosure; Publicity.** Subject to their legal obligations under the Texas Public Information Act, Texas Government Code Chapter 552, the parties will observe the confidentiality provisions of this agreement when issuing press releases or other public announcements. If Customer receives a request under the Texas Public Information Act for the disclosure of Covered Information, Customer will provide Amazon with prior notice and a reasonable opportunity to prevent disclosure of Covered Information.

**12.2 Force Majeure.** Force Majeure shall be in accordance with Section 10C of Appendix A, DIR Contract Number DIR-TSO-4221.

**12.3 Independent Contractors; Non-Exclusive Rights.** AWS and Customer are independent contractors, neither party, or any of their respective Affiliates, is an agent of the other for any purpose or has the authority to bind the other. Each party reserves the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

**12.4 No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

**12.5 U.S. Government Rights.** If Customer is using the Service Offerings on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue Customer's use of the Service Offerings. The terms "commercial item" and "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

**12.6 Import and Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of



Foreign Assets Control. For clarity, Customer is solely responsible for compliance related to the manner in which Customer chooses to use the Service Offerings, including Customer's transfer and processing of Customer Content, the provision of Customer Content to End Users, and the AWS region in which any of the foregoing occur.

## **12.7 Notice.**

**(a) General.** Except as otherwise set forth in Section 12.7(b), to give notice to a party under this Agreement, each party must contact the other party as follows: (i) by facsimile transmission; or (ii) by personal delivery, overnight courier or registered or certified mail. Notices must be sent to the fax number of the other party listed on the Cover Page to this Agreement or addressed to the address of the other party listed on the Cover Page to this Agreement, or such other fax number or address as a party may subsequently designate in a notice to the other party. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective upon delivery. Notices provided by registered or certified mail will be effective three business days after they are sent.

**(b) Electronic Notice.** AWS may provide notice to Customer: (i) under Sections 2.2 or 5.1 by (A) sending a message to the email address then associated with Customer's account, or (B) posting a notice on the AWS Site, (ii) under Section 6.1 by sending a message to the email address then associated with Customer's account, and (iii) under Section 2.1 by sending a message to the email address then associated with Customer's account (or such other email address as agreed upon by the parties) or via a support case. Notices provided by posting on the AWS Site will be effective upon posting and notices provided by email will be effective when AWS sends the email. For the notices in this contract that are deemed to be posted on the AWS site, AWS will review and notify DIR and Customers monthly via email (with delivery receipt confirmation) of any changes to the notices.

**(c) Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language. If AWS provides a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

**12.8 Assignment.** Assignment shall be in accordance with Section 3D of Appendix A, DIR Contract Number DIR-TSO-4221.

**12.9 No Waivers.** The failure by either party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit such party's right to enforce such provision at a later time. All waivers by a party must be in writing and sent in accordance with Section 12.7 to be effective.

**12.10 Severability.** If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

**12.11 International Goods.** The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

**12.12 Entire Agreement; Policies.** This Agreement includes the Policies, the following DIR Program documents as executed by AWS: *Contract for Products and Related Services* and the *Standard Terms and Conditions for products and Related Services Contracts* and is the entire agreement between Customer and AWS regarding the subject matter of this Agreement. DIR Contract Number DIR-TSO-4221 and this Agreement supersede all prior or contemporaneous representations, understandings, agreements, or communications between Customer and AWS, whether written or verbal, regarding the subject matter of this Agreement, including any acceptance by Customer or any of its employees (on behalf of Customer) of the AWS Customer Agreement in connection with accounts identified by Customer to AWS as accounts to be covered by this Agreement as described in Section 1.2. Notwithstanding any other agreement between Customer and AWS, the security and data privacy provisions in Section 3 of this Agreement contain AWS's and its Affiliates' entire obligation regarding the security, privacy and confidentiality of Customer Content. AWS will not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by Customer in

any order, receipt, acceptance, confirmation, correspondence or other document. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the parties to this Agreement.

**12.13 Counterparts; Facsimile.** This Agreement may be executed by facsimile and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

**13. Definitions.** Defined terms used in this Agreement with initial letters capitalized have the meanings given below:

**“Acceptable Use Policy”** means the policy currently available at <http://aws.amazon.com/aup>, as it may be updated by AWS from time to time.

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by or is under common control with that party.

**“API”** means an application program interface.

**“AWS Content”** means Content AWS or any of its Affiliates makes available in connection with the Services or on the AWS Site to allow access to and use of the Services, including WSDLs; Documentation; sample code; software libraries; command line tools; and other related technology. AWS Content does not include the Services or Third Party Content.

**“AWS Customer Agreement”** means AWS’s standard user agreement posted on the AWS Site at <http://aws.amazon.com/agreement>.

**“AWS Marks”** means any trademarks, service marks, service or trade names, logos, and other designations of AWS and its Affiliates that AWS may make available to Customer in connection with this Agreement.

**“AWS Network”** means AWS’s data center facilities, servers, networking equipment, and host software systems (e.g., virtual firewalls) that are within AWS’s control and are used to provide the Services.

**“AWS Site”** means <http://aws.amazon.com> and any successor or related site designated by AWS.

**“AWS Support Guidelines”** means the guidelines currently available at

<http://aws.amazon.com/premiumsupport/guidelines>, as they may be updated by AWS from time to time.

**“Customer Content”** means Content that Customer or any End User (a) runs on the Services, (b) causes to interface with the Services, or (c) uploads to the Services under Customer’s account or otherwise transfers, processes, uses or stores in connection with Customer’s account.

**“Customer Submissions”** means Content that Customer posts or otherwise submits to developer forums, sample code repositories, public data repositories, or similar community-focused areas of the AWS Site or the Services.

**“Content”** means software (including machine images), data, text, audio, video, images or other content.

**“Documentation”** means the developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications for the Services located at <http://aws.amazon.com/documentation>, as such documentation may be updated by AWS from time to time.

**“End User”** means any individual or entity that directly or indirectly through another user: (a) accesses or uses Customer Content; or (b) otherwise accesses or uses the Service Offerings under a Customer account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content under their own account, rather than a Customer account.

**“Losses”** means any claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees).

**“Policies”** means the Acceptable Use Policy, the Terms of Use, the Service Terms, the Trademark Use Guidelines, all restrictions described in the AWS Content and on the AWS Site, and any other policy or terms referenced in or incorporated into this Agreement, but does not include whitepapers or other marketing materials referenced on the AWS Site.

**“Privacy Policy”** means the privacy policy currently referenced at <http://aws.amazon.com/privacy>, as it may be updated by AWS from time to time.

**“Service”** means each of the web services made available by AWS or its Affiliates for which Customer

registers via the AWS Site, including those web services described in the Service Terms.

**“Service Level Agreement”** means all service level agreements that AWS offers with respect to the Services and post on the AWS Site, as they may be updated by AWS from time to time. The service level agreements that AWS currently offers with respect to the Services are located at <http://aws.amazon.com/ec2-sla/>, <http://aws.amazon.com/s3-sla/>, <http://aws.amazon.com/cloudfront/sla/>, <http://aws.amazon.com/route53/sla/>.

**“Service Offerings”** means the Services (including associated APIs), the AWS Content, the AWS Marks, the AWS Site, and any other product or service provided by AWS under this Agreement. Service Offerings do not include Third Party Content.

**“Service Terms”** means the rights and restrictions for particular Services located at <http://aws.amazon.com/serviceterms/>, as they may be updated by AWS from time to time.

**“Suggestions”** means all suggested improvements to the Service Offerings that Customer provides to AWS.

**“Term”** means the term of this Agreement described in Section 7.1.

**“Terms of Use”** means the terms of use located at <http://aws.amazon.com/terms/>, as they may be updated by AWS from time to time.

**“Third Party Content”** means Content of a third party made available to Customer in conjunction with the Services or by any third party on the AWS Site.

**“Trademark Use Guidelines”** means the guidelines and trademark license located at <http://aws.amazon.com/trademark-guidelines/>, as they may be updated by AWS from time to time.

## NONDISCLOSURE AGREEMENT

**COMPANY: Complete BOX below and FAX to (206) 266-7010 or e-mail to [contracts-legal@amazon.com](mailto:contracts-legal@amazon.com).**

Company Name: _____	Address: _____
By (signature): _____	_____
Printed Name: _____	_____
Title: _____	Fax No.: _____
Date Signed: _____	Email Address: _____

This Nondisclosure Agreement (this "Agreement") is entered into by Company for the benefit of Amazon.com, Inc. and its Affiliates ("Amazon"). In connection with Company's provision or acquisition of products, services, or content to or from Amazon, Company may receive information on Amazon's operations and businesses. In consideration of the receipt of such information, the Company agrees as follows:

**1. Confidential Information.** "Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or is under common control with that entity, and "Confidential Information" means all nonpublic information relating to Amazon or disclosed by Amazon or its Affiliates to the above-referenced company, its Affiliates or agents of any of the foregoing (collectively, "Company") that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential.

**2. Exclusions.** Confidential Information excludes information that (i) is or becomes publicly available without breach of this Agreement, (ii) can be shown by documentation to have been known to Company at the time of its receipt from Amazon, (iii) is disclosed to Company from any third party who did not acquire or disclose such information by a wrongful or tortious act, or (iv) can be shown by documentation to have been independently developed by Company without reference to any Confidential Information.

**3. Use of Confidential Information.** Company may use Confidential Information only in pursuance of its business relationship with Amazon. Except as provided in this Agreement, Company will not disclose Confidential Information to anyone without Amazon's prior written consent. Company will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature.

**4. Company Personnel.** Company will restrict the possession, knowledge and use of Confidential Information to each of its employees and subcontractors who (i) has a need to know the Confidential Information, and (ii) is legally obligated to protect the Confidential Information to the same or greater degree as required under this Agreement. Company will ensure that its employees, subcontractors and Affiliates comply with this Agreement.

**5. Disclosures to Governmental Entities.** Company may disclose Confidential Information as required to comply with orders of governmental entities with jurisdiction over it, if Company (i) gives Amazon prior written notice sufficient to allow Amazon to seek a protective order or other remedy (except to the extent that Company's compliance would cause it to violate an order of the governmental entity or other legal requirement), (ii) discloses only such information as is required by the governmental entity or as may be required by the Texas Public Information Act, Texas Government Code Chapter 552 (the "Act"), and (iii) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed. The parties acknowledge that Company is subject to the Act and that Company shall provide Amazon with notice as provided for in the Act.

**6. Ownership of Confidential Information.** All Confidential Information will remain the exclusive property of Amazon. Amazon's

disclosure of Confidential Information will not constitute an express or implied grant to Company of any rights to or under Amazon's patents, copyrights, trade secrets, trademarks or other intellectual property rights. Company will not use any trade name, trademark, logo or any other proprietary rights of Amazon (or any of its Affiliates) in any manner without prior written authorization of such use by a Vice President of Amazon (or its applicable Affiliate).

**7. Notice of Unauthorized Use.** Company will notify Amazon immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement. Company will cooperate with Amazon in every reasonable way to help Amazon regain possession of such Confidential Information and prevent its further unauthorized use and disclosure.

**8. Return of Confidential Information.** Subject to applicable records retention obligations, Company will return or destroy all tangible materials embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following Amazon's written request.

**9. Injunctive Relief.** Company acknowledges that a breach of its obligations under this Agreement could cause irreparable harm to Amazon as to which monetary damages may be difficult to ascertain or an inadequate remedy. Company agrees that Amazon will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement.

**10. Scope; Termination.** This Agreement covers Confidential Information received by Company on and subsequent to the date hereof. This Agreement is effective as of the date Confidential Information is first received and will continue for 4 years, after which it automatically renews unless either party terminates this Agreement by providing at least 90 days prior written notice to the other party, provided, that Company's obligations with respect to Confidential Information will survive for 5 years following termination of this Agreement, and Sections 6, 9, 10, and 11 will survive indefinitely and the confidentiality obligations of this Agreement will continue to apply to the Confidential Information for as long as the information continues to constitute a trade secret or does not otherwise fall within an exclusion described in Section 2.

**11. Miscellaneous.** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and may be amended, modified, or waived only with the mutual written consent of the parties. Company may not assign this Agreement without Amazon's written consent. If a provision of this Agreement is held invalid under applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect. This Agreement will be governed by internal laws of the State of Texas, without reference to its choice of law rules. Exclusive venue of any suit arising out of or relating to this Agreement will be in the state courts located in Travis County, Texas. Nothing herein will be construed to waive the sovereign or official immunity of the State of Texas, its political subdivisions, or its officers or employees. All notices hereunder will be in writing and will be sent by overnight courier, confirmed facsimile transmission certified mail or by electronic mail. Notices to Company will be delivered to the address set forth above.

Appendix F to DIR Contract Number DIR-TSO-4221

Notices to Amazon will be delivered, Attn. General Counsel, to: 410  
Terry Avenue North, Seattle, WA 98109-5210; Fax No. 206/266.7010.



**Appendix G to DIR Contract Number DIR-TSO-4221**  
**AWS GovCloud**

This Addendum No. 1 (this “**Addendum**”) to the AWS Customer Agreement (Appendix G to DIR Contract Number DIR-TSO-4221) (the “**Agreement**”) by and between Amazon Web Services, Inc. (“**AWS**”, “**we**”, “**us**” or “**our**”) and \_\_\_\_\_ [INSERT NAME OF ELIGIBLE DIR CUSTOMER] (“**you**” or “**Customer**”) is effective as of \_\_\_\_\_ [INSERT EFFECTIVE DATE] (the “**Addendum Effective Date**”). Unless otherwise defined in this Addendum, all capitalized terms used in this Addendum will have the meanings ascribed to them in the Agreement. The parties agree as follows:

1. **AWS Security.** Section 3.1 (“AWS Security”) of the Agreement is amended to add the following at the end of the section:

“Without limiting Section 10 or Customer’s obligations under Section 4, in accordance with the AWS Security Standards, for the AWS GovCloud(US) region AWS will implement reasonable and appropriate measures for the AWS Network designed to: (i) help Customer secure Customer Content against accidental or unlawful loss, access or disclosure; (ii) implement the in-scope Federal Risk and Authorization Management Program (“**FedRAMP**”) controls for the Services identified as FedRamp compliant; and (iii) maintain physical and logical access controls to limit access to the AWS Network by AWS personnel, including employees and contractors, to U.S. persons, as defined by 22 CFR part 120.15 (“U.S. Persons”) ((i), (ii) and (iii) collectively the “Security Objectives”).”

2. **U.S. Persons Restricted Access.** The following Sections 3.1.1 and 3.1.2 are added to the Agreement:

**“3.1.1 U.S. Persons Restricted Access.** The AWS GovCloud (US) region is the only AWS region that has physical and logical access controls that limit access to the AWS Network by AWS Personnel to U.S. Persons. You represent and warrant that you will only access the AWS GovCloud (US) region if: (i) you are a U.S. Person; (ii) you, if required by the International Traffic In Arms Regulations (“**ITAR**”), have and will maintain a valid Directorate of Defense Trade Controls registration; (iii) you are not subject to export restrictions under U.S. export control laws and regulations (e.g. you are not a denied or debarred party or otherwise subject to sanctions); and (iv) you maintain an effective compliance program to ensure compliance with applicable U.S. export control laws and regulations, including the ITAR. If requested by AWS, you agree to provide AWS with additional documentation and cooperation to verify the accuracy of the representations and warranties set forth in this Section.

**3.1.2 Your Responsibilities.** You are responsible for all physical and logical access controls beyond the AWS Network including, but not limited to, your account access, data transmission, encryption, and appropriate storage and processing of data within the AWS GovCloud (US) region. You are responsible for verifying that all End Users accessing Your Content in the AWS GovCloud (US) region are eligible to gain access to Your Content. The Services may not be used to process or store classified data. If you introduce classified data into the AWS Network, you will be responsible for all sanitization costs incurred by AWS. Your liability under this provision is exempt from any limitations of liability.”

3. **Definitions.**

The definition of “End User” is deleted in its entirety and replaced with the following:

“‘End User’ means any entity, person, or United States Federal, State or Local Government agency that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings under your account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content under their own account, rather than your account.”

4. **Nondisclosure.** Subject to its legal obligations under the Texas Public Information Act, Texas Government Code Chapter 552, the parties will observe the confidentiality provisions of this agreement when issuing press releases or other public announcements, including this Addendum. If Customer receives a request under the Texas Public Information Act for the disclosure of Covered Information, including this Amendment, Customer will provide AWS with prior notice and a reasonable opportunity to prevent disclosure of the information.
5. **Entire Agreement; Conflict.** Except as amended by this Addendum, the Agreement will remain in full force and effect. This Addendum, together with the Agreement as amended by this Addendum: (a) is intended by the parties as a final, complete and exclusive expression of the terms of their agreement, and (b) supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof. This document, DIR Contract Number DIR-TSO-4221 and its attachments and amendments make up the entire agreement.
6. **Counterparts and Facsimile Delivery.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall be deemed to constitute one and the same document. The parties may sign and deliver this Amendment by facsimile transmission.

*[Remainder of Page Intentionally Left Blank.]*



**IN WITNESS WHEREOF**, Company and AWS have executed this Amendment as of the Amendment Effective Date.

**AMAZON WEB SERVICES, INC.**

\_\_\_\_\_  
**[NAME OF ELIGIBLE DIR CUSTOMER]**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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