



**SIGNATURE DOCUMENT  
FOR  
HEALTH AND HUMAN SERVICES COMMISSION  
AND  
AFFILIATED COMMUNICATIONS, INC.**

(HHSC CONTRACT NO. HHS000660600001,  
FROM SOLICITATION HHS0005916 )  
(UNDER DIR CONTRACT NO. DIR-TSO-3987)

**I. PURPOSE**

The **Health and Human Services Commission** (“**HHSC**”), an administrative agency within the executive department of the State of Texas and having its principal office at 4900 N. Lamar Blvd., Austin, TX 78751 and **Affiliated Communications, Inc.** (“**Contractor**”), having its principal office at 2105 Donley Drive, Suite 300, Austin, TX 78758 (each a “**Party**” and collectively the “**Parties**”) enter into the following Managed Services contract for Telecommunications (the “**Contract**”).

**II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions of Title 10, Subtitle D of the Texas Government Code §§ 2155.144 and 2157.068.

**III. STATEMENT OF SERVICES TO BE PROVIDED**

Contractor shall perform or cause to be performed the Services in accordance with **ATTACHMENT A, DIR CONTRACT NO. DIR TSO 3987 (“DIR CONTRACT”); ATTACHMENT B, STATEMENT OF WORK; SECTION V, COST OF SERVICES/SERVICE SCHEDULE** stated below; and the other Attachments listed below in **Section VIII, Order of Precedence**. All documents attached to the Contract may not weaken or diminish any terms and conditions in **DIR CONTRACT NO. DIR TSO 3987**. To the extent the DIR Contract provides more favorable terms to HHSC or imposes more rigorous obligations on Contractor, the DIR Contract supersedes and controls over the Contract; the Contract supersedes and controls over the DIR Contract for any other conflict between the terms and conditions of the Contract and the terms and conditions of the DIR Contract.

**IV. DURATION**

The Contract is effective on the signature date of the latter of the Parties to sign this Contract and terminates on the second anniversary thereof, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. HHSC, at its own discretion, may extend this Contract for two (2), two (2) year extensions, subject to terms and conditions mutually agreeable to the Parties. Furthermore, any services rendered as of September 1, 2019 through the effective date of the Contract are hereby ratified.



**V. COST OF SERVICES/SERVICE SCHEDULE**

The total amount of this Contract will not exceed **\$372,545.32**. Payment for each year shall not exceed **\$186,272.66**. Standard Service for HHSC is Monday through Sunday, 7 days by 24 hours. Down systems shall be dispatched within one (1) hour of call-in time. Emergency Service is defined at 25% of the "Buyer's" system out-of-service; first trunks of the "Buyer's" main line out-of-service; a console out-of-service; or any other particulars requiring coverage, will be dispatched within 1 hour of call-in time, 7 days by 24 hours.

**VI. CONTRACT REPRESENTATIVES**

The following will act as the Representative authorized to administer activities under this Contract on behalf of their respective Party.

**HHSC**

Health and Human Services Commission  
4900 N. Lamar Blvd  
Austin, TX 78751  
Attention: Reynaldo Velazquez, Contract Administration Manager

**CONTRACTOR**

Affiliated Communications, Inc.  
2105 Donley Drive, Suite 300  
Austin, TX 78758  
Attention: Steve Springfield, ACI Representative

**VII. LEGAL NOTICES**

Any legal notice required under this Contract shall be deemed delivered when deposited by HHSC either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**HHSC**

Health and Human Services Commission  
4900 N. Lamar Blvd  
Austin, TX 78751  
Attention: Dr. Courtney N. Phillips

*with a copy to:*

Health and Human Services Commission  
4900 N. Lamar Blvd  
Austin, TX 78751  
Attention: Karen Ray, Chief Counsel



**CONTRACTOR**

Affiliated Communications, Inc.  
2105 Donley Drive, Suite 300  
Austin, TX 78758  
Attention: Larry Carter, President

Legal notice given by Contractor shall be deemed effective when received by HHSC. Either Party may change its address for notice by written notice to the other Party.

**VIII. ORDER OF PRECEDENCE**

Subject to **Section III** (above), in the event of a conflict or ambiguity between the terms and conditions set forth in the documents that comprise this Contract, the controlling document shall be this Signature Document, then the remaining documents in the following list in the order stated:

- 1) **Attachment A: DIR Contract No. DIR TSO 3987**
- 2) **Attachment B: Statement of Work**
- 3) **Attachment C: HHSC Contract Affirmations**
- 4) **Attachment D: HHSC Uniform Terms and Conditions**
- 5) **Attachment E: HHSC Special Conditions**
- 6) **Attachment F: HHSC Data Use Agreement, inclusive of the DUA Attachment 2 (HHSC Security and Privacy Inquiry) therein**
- 7) **Attachment G: Contractor's Proposal**
- 8) **Attachment H: Lobbying Certification**
- 9) **Attachment I: Federal Assurances**
- 10) **Attachment J: FFATA Certification**

\*Attachments A-J referenced above are incorporated into this Signature Document by reference for all purposes.

**IX. SERVICE SCHEDULE**

Standard Service for HHSC DDS is Monday through Sunday, 7 days by 24 hours. Down systems shall be dispatched within one (1) hour of call-in time. Emergency Service is defined as 25% of the "Buyer's" system out-of-service; first trunks of the "Buyer's" main line out-of-service; a console out-of-service; or any other particulars requiring coverage in Sections XI and XII below, and will be dispatched within 1 hour of call-in time, 7 days by 24 hours.

**X. GENERAL EXCLUSIONS**

This Agreement does not include equipment lost, stolen, or damaged due to negligence, tampering, misuse, accident, or resulting from electrical storms, lightning due to violent weather, power outages or failure to maintain a proper equipment environment nor the labor associated with the repair or replacement of the equipment. Any exceptions/exclusions are also covered in **Appendix A to Attachment A**.



## **XI. SPECIFIC EXCLUSIONS UNLESS COVERAGE IS SELECTED**

Affiliated will provide technical support, but will not provide replacement of the following items:

1. IP Phones
2. IP Clocks
3. IP speakers and IP speaker system

Data Switches – Avaya’s data portfolio was acquired by Extreme Networks. The End of Sale Date and End of Manufacturer Support Date for the solution covered herein occurred on May 4, 2016. Release 5.7 is considered in the Extended Services Support period which will remain in effect until December 14, 2021. This will continue to be supported at Manufacturer Discontinued level in **Section XII** of this document and a support contract will remain in place for this term.

Affiliated will assist in troubleshooting UPS Chassis hardware and battery issues, but will not cover failed/faulty batteries or replace chassis that are not under manufacturer support. Labor to install new UPS systems purchased from Affiliated is included.

Avaya Aura Conferencing – current hardware platform will not support future updates/upgrades. New hardware will need to be acquired at an additional cost so that updates and upgrades can be made.

Avaya IQ – Avaya Professional Services is the only authorized technical resource that is allowed to perform upgrades to IQ. The Avaya DIR Contract will be utilized for cost of services.

Affiliated is providing maintenance and support on existing equipment and cannot be held responsible for manufacturer discontinued systems/application or for hardware which no longer meets specifications for upgrades. Affiliated also cannot be held financially responsible for applications which can only be upgraded by Avaya Professional Service. Avaya labor rates are determined by DIR Contract. Affiliated will provide its best efforts to provide labor to upgrade systems and applications as part of this Contract.

## **XII. MANUFACTURER SUPPORT**

Effective July 1, 2010, all Non-End-of-Life (“EOL”) AVAYA voice systems and applications will require an Avaya support agreement (PASS/Support Advantage) in order to access 2nd level manufacturer support. Support Advantage/Upgrade Advantage can be purchased through Affiliated for all software that has not reached End of Life status. For all EOL releases, limited support from the manufacturer is available on a Time & Materials basis. Affiliated will continue to support EOL releases for equipment at our normal contracted response times. Supported Software Releases (Support Advantage Contract Required) Active Status (current) Full Support Sustained Status (Previous) Full Support Manufacture Discontinued Status Basic Support, no new patches/fixes.



**XIII. SUPPORT BREAKDOWN**

Avaya Support Agreement

1. Support Advantage Preferred and Upgrade Advantage;
2. Veramark Call Accounting Software;
3. Syn-Apps;
4. Avaya Data Switches;
5. IQ Security Certificate; and
6. Affiliated Maintenance & Support

**XIV. TIME AND MATERIALS RATES:**

Monday–Friday (8 a.m.–5 p.m.) \$110.00/hour for all EOL Releases, as stated in Section XII.

**SIGNATURE PAGE FOLLOWS**



**TEXAS**  
Health and Human  
Services

**SIGNATURE PAGE FOR HHSC SIGNATURE DOCUMENT**  
**(HHSC CONTRACT NO. HHS000660600001)**  
**(UNDER DIR CONTRACT NO. DIR-TSO-3987)**

**HEALTH AND HUMAN SERVICES AFFILIATED COMMUNICATIONS, INC.**  
**COMMISSION**

DocuSigned by:  
*Wayne Salter*  
1864D3EC1EE34C4...  
SIGNATURE

*[Handwritten Signature]*  
SIGNATURE

Wayne Salter  
PRINTED NAME

*Jim L. Carter*  
PRINTED NAME

AES Deputy Executive Commissioner  
TITLE

*VP*  
TITLE

October 25, 2019  
DATE OF EXECUTION

*10/21/19*  
DATE OF EXECUTION

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES**

**Affiliated Telephone, Inc.**

**1. Introduction**

**A. Parties**

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Affiliated Telephone, Inc. (hereinafter "Vendor"), with its principal place of business at 730 Avenue F, Suite 210, Plano, TX 75074.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-262, on February 15, 2017, for Managed Services for Telecommunications. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-262 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, Sample Statement of Work; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-262, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-262, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

**3. Service Offerings**

Services available under this Contract are limited to the designated telecommunications managed services as specified below. Vendor may incorporate changes to their services offerings; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. The designated services are offered only as components of comprehensive suites of telecommunications managed services. One or more of the designated service offerings (i) may require contracting for service components of a comprehensive suite of telecommunications managed services or (ii) may be unavailable as service components, at the discretion of the Vendor.

***Management of telecommunications services as set forth below:***

**A.** Management Services is the management of customer owned equipment or vendor provided equipment in support of the following technology services:

1. Management of call processing architecture
2. Call Center or Contact Center Services
3. IVR/Auto-Attendant
4. Phone Systems Management (PBX, key system, etc.) or Integration
5. Management of Voice and/or Data Networks
6. Network Optimization

**B.** The following services can be included to provide a total managed service solution:

1. Hosted Solutions are offered to customers on a subscription basis and includes the IT infrastructure (hardware and software) and support services necessary to deliver the solution. Hosted services include technology services listed here:
  - a. Call Center or Contact Center Services
  - b. IVR/Auto-Attendant
2. Requirements Development
3. Integration Services
4. SLA's and Performance Metrics
5. Reporting
6. Asset Management
7. Project management
8. Operations
9. Support Services
  - a. Move, Add, Changes (MACs)
  - b. Solution Design
  - c. Solution Software and Licenses
  - d. Network Readiness Assessment and Optimization
  - e. Transition and Termination Services
  - f. Break/Fix and Maintenance
  - g. Help/Support Desk Services
  - h. Training



C. Excluded Telecommunications Service Offerings

**Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001. The following services were awarded under the TEX-AN Next Generation Procurement:**

1. Long Distance Services
2. Internet Services (including SOHO)
3. Voice over Internet Protocol (VoIP)
4. Local Voice Service
5. Fixed Satellite
6. Access and Transport

4. **Pricing**

**A. Customer Price**

Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer's Statement of Work.

**B. DIR Cost Recovery Fee**

The cost recovery fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

5. **DIR Cost Recovery Fee**

**A.** The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is zero-point seventy-five percent (0.75%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$750.

**B.** All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR.

6. **Notification**

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

If sent to the State:

Dana L. Collins, CTPM, CTCM  
Director, Enterprise Contract Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4000  
Facsimile: (512) 475-4759

Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:

Jim Carter, Partner  
Affiliated Telephone, Inc.  
730 Avenue F, Suite 210  
Plano, TX 75074  
Phone: (972) 852-4010  
Email: [jcarter@affiliatedcom.com](mailto:jcarter@affiliatedcom.com)

**7. Managed Services Requirements**

A. The centralized telecommunications system for the state of Texas is known as TEX-AN. The current technological platform of TEX-AN is known as TEX-AN NG. The TEX-AN NG architecture provides a solid statewide communications infrastructure that is adaptable to changing requirements and can incorporate new and emerging technologies. The TEX-AN NG platform provides unified, scalable, redundant, flexible, and extremely cost-effective networking solutions. TEX-AN NG provides voice and data services and features:

Voice Services:

- Toll-Free Service
- Long Distance Service
- Directory Assistance
- Dedicated circuit access

Data Services:

- Frame Relay/Asynchronous Transfer Mode (ATM)
- MPLS (Multiprotocol Label Switching)
- Access Services
- Internet Access
- Point-to-Point circuits
- DSL
- SOHO
- Fixed Satellite

Vendors must utilize the TEX-AN Network for any transport services included in their managed service solution. These services and associated fees should be included by the vendor in a managed service solution proposal as required for a Customer. Any transport services required for the managed service solution will be ordered by the customer from DIR. The Customer is required, as the eligible purchasing entity, to utilize the current TEX-AN or Co-op Contracts and procedures to directly purchase the services from DIR.

**DIR Contract No. DIR-TSO-3987****Vendor Contract No. \_\_\_\_\_**

In addition to its primary services, DIR offers Co-op and Telecom contracts for communications services. These contracts are awarded on behalf of the state according to state competitive bidding requirements, and are designed to satisfy user requirements for easy-to-use communications services contracts. The comprehensive suite of products and services offered by these contracts includes:

- Interpreter Services
- Local Telephone Services
- Wireless/Cellular Services
- Pagers and Paging Services
- Technology Based Conferencing

These services and associated fees should be included by the vendor in a managed service solution proposal as required for a customer. The customer is required, as the eligible purchasing entity, to utilizing the current TEX-AN NG, Co-op Contracts and Telecom procedures to directly purchase the services from DIR.

- B.** Vendor shall prepare and provide each customer with a managed service solution proposal. The proposal shall include all services proposed by Vendor which are included in this contract, as well as all Excluded Service Offerings and associated fees as required for a Customer to contract for a complete solution.
- C.** Vendor shall make every effort to provide value to DIR Customers through well-defined requirements and project scheduling that meet the stated objectives and business goals for managed service customers. Vendors must create Statements of Work (SOW) under this Contract to document customer expectations; requirements; milestones for deliverables and activities; and payment schedules.
- D.** Vendor shall provide a copy of Customers proposed SOW and solution design documents to a designated contact at DIR no less than fifteen (15) days prior to presenting the final managed services solution proposal to the customer. The plan for the TEX-AN NG network connectivity in the solution design must be approved by DIR. The approval shall occur as soon as practicable based on the date of submission.
- E.** Vendor will work with DIR to facilitate the communication and management of the contract provisions outlined in this document for reviews, reporting, purchasing and approvals.
- F.** Vendor shall employ performance-based managed services for highly reliable customer solutions that meet or exceed customer expectations and performance metrics. Performance metrics and SLA's will meet, as a baseline, or exceed industry standards.
- G.** Vendor shall adhere to the DIR Security Policies included in 1 TAC Chapter 202, Information Security Standards and be consistent with the best practices as outlined in the State Enterprise Security Plan. Vendor must convey the established security

**DIR Contract No. DIR-TSO-3987**

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

standards to the customer, as well as any additional vendor provided security services. The State Enterprise Security Plan and other guiding security policies are located on the DIR web site.

**H.** Vendor will execute a direct contract with the customer that accurately reflects the resources required for the total project and contains the resources and prices for services the customer is required to purchase directly from DIR for the successful implementation of the proposed solution (“Supplemental Agreements”). DIR will bill the customer directly for the services purchased from TEX-AN NG. Vendor is responsible for preparing and properly billing the customer for its services according to milestones or other scheduled triggering events.

**8. Statement of Work**

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix C of this Contract. 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 with this Contract.

**9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.**

No exceptions have been agreed to by DIR and Vendor.

**DIR Contract No. DIR-TSO-3987**

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

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

**Affiliated Telephone, Inc.**

**Authorized By:** /signature on file/

**Name:** Jim Carter

**Title:** Partner

**Date:** 9/21/2017 | 8:53 PM CDT

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

**Authorized By:** /signature on file/

**Name:** Wayne Egeler

**Title:** CTS Director

**Date:** 9/22/2017 | 8:08 AM CDT

**Office of General Counsel:** /signature on file/

**Appendix A:  
Standard Terms and Conditions for Telecom Managed Services Contracts  
(per Amendment 1)**

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**Appendix A:**  
**Standard Terms and Conditions for Telecom Managed 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, as defined by Texas Government Code 2054.003; and the following entities that are not state agencies:

- (1) each house of the legislature;
- (2) a legislative agency;
- (3) an agency that is not a state agency as defined by Section 2151.002;
- (4) a political subdivision, including a county, municipality, or district;
- (5) a private institution of higher education accredited by a recognized accrediting agency, as defined by Section 61.003, Education Code, that:
  - (A) engages in distance learning, as defined by Section 57.021, Utilities Code; and
  - (B) receives federal funds for distance learning initiatives; and
- (6) an assistance organization, as defined by 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.

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

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

**C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.

**D. CPA** – refers to the Texas Comptroller of Public Accounts.

**E. Day** – shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

**F. 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 or Statement of Work 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

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such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.

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

**D. Assignment**

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

**E. Survival**

All applicable 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;

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no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

**H. Proof of Financial Stability**

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

**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

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party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

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

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

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

**B. Ownership**

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976, as amended. 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.

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**C. Further Actions**

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

**D. Waiver of Moral Rights**

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

**E. Confidentiality**

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

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**F. Injunctive Relief**

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

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

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

**H. Vendor License to Use**

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

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

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

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**J. Agreement with Subcontracts**

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

**K. License to Customer**

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

**L. Vendor Development Rights**

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

**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)**

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

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



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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)**

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

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 a DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

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

3) Commodity products required for services offered through this contract may not be purchased through this contract. Services offered through this contract may include the use of Vendor-owned equipment, but any customer-owned equipment required for the services may be purchased through one of DIR's commodity contracts.

4) 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.

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**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 DIR logo in accordance with the requirements of this Section;
- b) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- c) the services awarded;
- d) description of service awarded;
- e) contact information (name, telephone number and email address) for Vendor;
- f) instructions for obtaining quotes and placing Purchase Orders;
- g) warranty policies;
- h) return policies; and
- i) a link to the DIR Telecom Contracts Landing page.

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.

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**5) Use of Access Data Prohibited**

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

**6) Responsibility for Content**

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

**C. Services Warranty and Return Policies**

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

**D. DIR Logo**

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

**E. Vendor Logo**

If DIR receives 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.

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**G. Orientation Meeting**

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

**H. Performance Review Meetings**

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

**I. DIR Cost Avoidance**

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

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

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A.1), B-C, E, F.1), F.3), G**

**A. Customer Price**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION A.1)**

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

**Customer Price = (Price as set forth in Appendix C, Statement of Work) 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 purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended days to reflect the lower price.

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**B. 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.

**C. 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 (<https://comptroller.texas.gov/purchasing/programs/travel-management>). 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.

**D. Changes to Prices**

Subject to the requirements of this section, Vendor may request to change the price of any service at any time.

The parties agree to use the Electronic Administrative Update (EAU) Process to submit, review, approve and implement administrative changes to Appendix C Pricing. Administrative updates may include, but are not limited to price decreases, format corrections, or the addition of new services that were not available at the time of submission to the RFO and that are within the original scope of the RFO. Appendix C Pricing changes shall be provided to Customers via the Vendor's webpage and the DIR Contract web page.

**E. 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.

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**F. Invoices**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR F.1)**

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 submitted timely, within a single billing cycle, and must be 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.

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR F.3)**

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.

**G. 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.

**H. Telecommunication Fees and Surcharges and Taxes**

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

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2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

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

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

**I. DIR Administrative Fee**

The DIR Administrative Fee (AF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the AF to recover its costs in accordance with the statute. The initial rate for the AF is set forth in Section 5 of the Contract. The DIR AF specified in Section 5 of the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer. Monthly reporting and submittal requirements for AF are described in Section 8.B.4), below.

**8. Contract Administration**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A, C.1, D**

**A. Contract Managers**

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

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

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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, 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, Electronic Product Environmental Assessment Tool (EPEAT) designation (if applicable), configuration (if applicable), contract discount percentage, contract price, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

**3) Historically Underutilized Businesses Subcontract Reports**

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

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



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**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.

**C. Records and Audit**

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

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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, 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 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 shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor 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 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

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and payment of administrative fees.

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

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

**3) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third-party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY

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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 service for a purpose or in a manner for which the service was not designed, (ii) any modification made to the service without Vendor's written approval, (iii) any modifications made to the service 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 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 service, or (ii) modify or replace the affected portion of the service with functionally equivalent or superior service so that Customer's use is non-infringing.

**4) PROPERTY DAMAGE**

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

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

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

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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 that they:

- i. have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- ii. are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- iii. neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- iv. have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- v. under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- vi. to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- vii. Vendor and its principals are not suspended or debarred from doing business

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- 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 services and materials produced in the State of Texas when available at the price and time comparable to services and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
  - x. agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
  - xi. agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
  - xii. are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
  - xiii. represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
  - xiv. under Section 2155.006 and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
  - xv. have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
  - xvi. represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
  - xvii. represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and

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- will not boycott Israel during the term of this Contract.
- xviii. During the term of the Contract, Vendor shall, for itself and on behalf of its resellers or subcontractors, 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.
- xix. 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 shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

**E. Equal Opportunity Compliance**

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

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

**F. Use of Subcontractors**

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

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

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under the Contract.

**G. Responsibility for Actions**

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

1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under the Certification Statement of Exhibit A to the RFO and/or Section 9.C., 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**

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

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

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

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

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



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the employee or subcontractor in question.

**K. Limitation of Liability**

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

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) 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 five (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

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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 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

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of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

**P. Immigration**

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

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

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

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

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

**Q. Public Disclosure**

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

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

**R. 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 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.

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**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 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, B.2), B.5)-B.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

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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 TO B.2), B.5) - B.7)**

**1) Termination for Non-Appropriation**

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

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

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

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor 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**

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

**b) Purchase Order**

Customer 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

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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**

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

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

**7) Vendor Rights Under Termination**

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

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

**C. Force Majeure**

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

**11. Notification**

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

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**A. Notices**

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

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**

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

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.





# 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.



# HUB Subcontracting Plan (HSP)

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

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

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

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

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

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

## SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Affiliated Telephone, Inc. State of Texas VID #: 75-1964065  
 Point of Contact: Jim Carter Phone #: 972-852-4010  
 E-mail Address: jcarter@affiliatedcom.com Fax #: 972-422-9867
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: DIR-TSO-TMP-262 Bid Open Date: 03-21-17  
(mm/dd/yyyy)

Enter your company's name here: Affiliated Telephone, Inc. Requisition #: DIR-TSO-TMP-262

**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 §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

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

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods 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 <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1	Jabbercom - Labor	5 %	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		<b>%</b>	<b>%</b>	<b>%</b>

(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: Affiliated Telephone, Inc. Requisition #: DIR-TSO-TMP-262

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
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		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		<b>5 %</b>	<b>%</b>	<b>%</b>

**\*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: Affiliated Telephone, Inc. Requisition #: DIR-TSO-TMP-262

**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.

**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.

/signature on file/	<b>Jim Carter</b>	<b>Vice Pres.</b>	<b>03-15-17</b>
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.

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

Rev. 10/16

Enter your company's name here: Affiliated Telephone, Inc. Requisition #: DIR-TSO-TMP-262

**IMPORTANT:** If you responded "Yes" to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" 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-a.pdf>

## SECTION A-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: 1 Description: Labor

## SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-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
Jabbercom	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No	1043743602400	\$ 50,000	5 %
	<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		\$	%
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	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

**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 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.

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

Rev. 10/16

Enter your company's name here: Affiliated Telephone, Inc.Requisition #: DIR-TSO-TMP-262

**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.

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

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

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

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	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.

Enter your company's name here: Affiliated Telephone, Inc. Requisition #: DIR-TSO-TMP-262

**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/passcmbsearch/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
Jabbercom	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No	1043743602400	\$ 50,000	5 %
	<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.





## **Appendix C**

### **Department of Information Resources**

#### **Managed Services for Telecommunications Contract**

##### **Sample Statement of Work**

**ATTACHMENT 1**  
**STATEMENT OF WORK (SOW)**  
**FOR**  
**Managed Services for**  
**Telecommunication**

***Engagement Name***

***DIR Customer Name***

***DATE***

## 1. Introduction

Describe the managed service to be delivered and the characteristics of the services at a summary level. The statement of work (SOW) is unique and distinct for each engagement.

## 2. Background

Explain why the Customer is contracting for this managed service. Provide useful information regarding the Customer organization, engagement history, future plans or any other relevant information regarding the work to be performed.

## 3. Scope

### Sample Content

#### 3.1 Engagement-Based Services

- Scope of work
- Engagement risks, assumptions and constraints
- Roles and responsibilities
- Detailed description of managed service
- Acceptance criteria
- Engagement completion criteria
- Engagement schedules to be achieved by vendor
- Relevant quality processes that will apply, such as change management, acceptance, and risk and issue management

#### 3.2 Outsourced Services

- Scope of services to be delivered
- Acceptance criteria
- Service-level objectives
- Key performance indicators
- Service-level agreements (SLAs)
- Service-level management

## 4. Services

### 4.1 Sample Content

**(Example – at a minimum, Customers should consider the following items when developing their SOW)**

- Managed Services must be provided on the dates specified. Any changes to the delivery date must have prior approval (in writing) by the Customer contract manager or designate.
- All managed services must be submitted in a format approved by the Customer contract manager.
- If the managed service cannot be provided within the scheduled time frame, the Vendor is required to contact the Customer contract manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
- A request for a revised schedule must be reviewed and approved by the Customer contract manager before placed in effect. Contract Terms and Conditions may dictate

remedies, costs, and other actions based on the facts related to the request for a revised schedule.

- The Customer will complete a review of each submitted managed service within specified working days for the date of receipt
- A kickoff meeting will be held at a location and time selected by the Customer where the Vendor and its staff will be introduced to the Customer.

#### 4.2 Sample Delivery Schedule

No.	Item	SOW Paragraph	Due Date	Recipient
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				

#### 5. Reports and Meetings

**Sample Content (Example – at a minimum, Customers should consider the following items when developing their SOW)**

- The Vendor is required to provide the Customer contract manager with weekly written progress reports of this engagement. These are due to the Customer contract manager by the close of business on the *specify day* each week throughout the life of the project
- The progress reports shall cover all work performed and completed during the week for which the progress report is provided and shall present the work to be performed during the subsequent week.
- The progress report shall identify any problems encountered or still outstanding with an explanation of the cause and resolution of the problem or how the problem will be resolved.
- The Vendor will be responsible for conducting weekly status meetings with the Customer contract manager. The meetings will be held on *specify day* of each week - at a time and place so designated by the Customer contract manager - unless revised by the Customer contract manager. The meetings can be in person or over the phone at the discretion of the Customer contract manager.

#### 6. Service Level Agreement

The items listed below are suggestions for areas to be considered for service levels and incorporated into the SOW service level agreement.

- Security (as defined by customer)
- Quality (as defined by customer)
- Availability (data, system, and components)
- Performance (transmission, response, or completion times)

- Meantime to Resolution (MTR)
- Business Continuity
- Required communications (meetings, reports, calls, emails)
- Required documents (plans, estimates, schedules, analyses)
- Degree of accuracy of estimates (schedule, budget, resources, total)
- Effective risk management and response (adherence to plans)
- Effective scope management and change control (adherence to plans)
- Data quality (fitness for use, accuracy, precision, completeness)
- Ad hoc query response (usually written in terms of averages)
- Reliability (queries generate same valid results)
- Consistency (calculations and definitions are consistent regardless of source or function)
- Acceptable usage (query controls)
- Correct mapping of old to new (no functions or data lost that were not planned to retire)
- Previous software, system, or service retired on time

## **7. Period of Performance**

Specify the period of performance in which the Vendor will conduct and complete the work associated with the SOW.

## **8. Invoices**

Describe the Vendor's responsibilities for invoicing Customer including invoice content, frequency/schedule and instructions for submitting invoices. Payments will be made in accordance with Appendix A of the DIR-TSO-3987 Contract.

## **9. Customer/Vendor-Furnished Equipment and Work Space**

Specify what equipment and/or work space the Customer will provide or the expectations of what the Vendor will provide.

## **10. 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.

## **11. Vendor Response**

**Sample Content (Example – at a minimum, Customers should consider the following items when developing their SOW)**

- All written managed services proposed must be phrased in terms and language that can be easily understood by non-technical personnel (e.g., laypersons without subject matter expertise)
- All document managed services proposed must be in formats (hard copy and electronic) as specified by the Customer - at a minimum, the formats must be in industry accepted standards (e.g., MS Word, MS PowerPoint, MS Project)
- The Vendor must demonstrate its knowledge and expertise of the environment (e.g., platforms, software, applications, network, tools, etc.) for which work is to be performed
- All items of this agreement shall be done in accordance with the Service Level Agreement.

**Sample Content**

- Agreement to confidentiality and legal statements
- Vendor staff capabilities specific to this SOW:
  - Organization chart
  - Management team resumes
  - Key personnel resumes
- Vendor’s services capabilities:
  - Outline of capability to deliver the required services, including process, functional and technical expertise
  - Agreed-on SOW for managed services
  - Engagement plans for project services or transition
- Project management plan addressing the tasks specified in the SOW

**12. Pricing**

The main purpose of this section is to detail the pricing for the deliverables-based services. Vendors should also provide a summary of any assumptions and exclusions.

**Sample Pricing Sheet**

Engagement No.	Engagement Name	Price

**13. Response Submission Requirements**

**Sample Content**

- SOW schedule of events: deadline for questions, deadline for answering questions, response due date
- Address for response submission
- Number of copies
- Mandatory response contents



## **Department of Information Resources**

**Request for Offer  
DIR-TSO-TMP-262**

**Managed Services for Telecommunications**

**Issued:  
2/15/17**

**Initial Responses Due: 3/21/17**



**Department of Information Resources  
Managed Services for Telecommunication  
Request for Offer DIR-SDD-TMP-262**

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**Department of Information Resources  
Managed Services for Telecommunication  
Request for Offer DIR-SDD-TMP-262**

## **1. Introduction**

### **1.1. Purpose**

The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide Managed Services for Telecommunications services to the State of Texas, acting by and through the Department of Information Resources (DIR).

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

As a result of this RFO, DIR expects to create a contractual vehicle that satisfies statewide procurement requirements for Managed Services for Telecommunications Services Contracts and improves the efficiency of the procurement process by shortening the time required to procure Managed Services for Telecommunications.

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

### **1.2. Background**

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

DIR, through its Communications Technology Division, is conducting this procurement under Chapter 2170, Texas Government Code, by negotiating, managing, and administering telecommunications contracts with communications technology providers. Telecommunications Customers include any Texas state agency, as defined by Section 2151.002, Texas Government Code to mean: a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute; the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or a university system or an institution of higher education as defined by Section 61.003, Education Code, except a public junior college. Customers also include entities other than state agencies, as defined by Section 2170.004, Texas Government Code to mean: each house of the legislature; a legislative agency; an agency that is not a state agency as defined by Section 2151.002; a political subdivision, including a county, municipality, or district; a private institution of higher education accredited by a recognized accrediting agency, as defined by Section 61.003, Education Code, that engages in distance learning, as defined by Section 57.021, Utilities Code and receives federal funds for distance learning initiatives; and assistance organizations, as defined by Section 2175.001, Texas Government Code.

DIR combines the buying power of eligible Customers to obtain volume-discounted pricing for selected technology products and services. For contracts awarded as a result of this procurement, the Telecommunications Customers, as defined

**Department of Information Resources  
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above, will be able to have a direct sales relationship with the selected Communications Technology Vendors awarded telecommunications services. All Customers contact the vendor for services and pricing information and send their purchase orders (with the DIR contract number) and payments directly to the awarded Vendors, not to DIR.

Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001 is excluded. The following services were awarded under the TEX-AN Next Generation Procurement: Long Distance Services, Internet Services (including SOHO), Voice over Internet Protocol (VoIP), Local Voice Service, Fixed Satellite, and Access and Transport.

**1.2.2 Cost Recovery**

DIR's telecommunications program is a cost recovery program. DIR, in its discretion, formulates cost recovery fees (CRF) per Service designed to fulfill its program needs, as authorized in Chapter 2170, Texas Government Code. Such CRFs may change over time and DIR will provide Vendor with 30 days' advance notice of a change in the CRFs. Vendor shall include the applicable CRF, as a component of its Price, in its bills to the Customers and shall remit the direct sales transaction CRF to DIR on a monthly basis. The CRF of 0.75% will apply to all contracts resulting from the RFO. For CRF changes, Vendor shall implement charge and remit to DIR on a going forward basis the new effective CRF in 2 billing periods from CRF Amendment Effective Date.

**1.2.3 Current Contracts**

DIR currently has multiple contracts with ten Vendors to provide Managed Services for Telecommunications. The volume of services sold through the contracts for fiscal years 2013-2016 was approximately \$58,591,200. The State's fiscal year runs September 1<sup>st</sup> through August 31<sup>st</sup>.

<b>Vendor</b>	<b>Fiscal Years 2013-2016</b>
AT & T Corporation	\$26,856,300.00
Insight Public Sector, Inc.	\$19,442,091.00
CenturyLink Communications, LLC	\$7,732,545.00
Presidio Networked Solutions Group, LLC	\$2,771,230.00
Black Box Network Services, Inc.	\$755,795.00
Verizon Business Network Services, Inc.	\$616,761.00
Globalscope Communications Corporation	\$174,819.00

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Continuant, Inc dba Continuant Texas, Inc.	\$135,041.00
EnaComm, Inc.	\$105,120.00
Porter Burgess Company DBA Flair Data Systems	\$1,500.00
<b>Totals</b>	<b>\$ 58,591,200.00</b>

## 2. Scope

### 2.1. Services

**This RFO is for services only. No hardware or software products may be sold through a contract resulting from this RFO. Any products needed to deliver final services must be procured through another contract vehicle.** DIR intends to contract to provide Managed Services for Telecommunications. The purpose of the services is to provide DIR eligible customers an effective and efficient means to obtain a variety of managed services solutions. DIR intends to establish master contracts to provide comprehensive services that will include, but are not limited to: Managed Services, Support Services and Technology Services and Related Services. Customers may order the Services by execution of a Statements of Work (SOWs). Each vendor will demonstrate its qualifications and experience for each engagement for which it intends to respond.

DIR is not soliciting Managed Services for Telecommunications for the agency. DIR establishes statewide master contracts for use by DIR eligible customers. DIR competitively bids for information technology products and services.

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

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

### 2.2. Representative Examples of Managed Services

***Management of telecommunications services as set forth below:***

- A. Management Services is the management of customer owned equipment or vendor provided equipment in support of the following technology services:
  - a. Management of call processing architecture
  - b. Call Center or Contact Center Services
  - c. IVR/Auto-Attendant
  - d. Phone Systems Management (PBX, key system, etc.) or Integration
  - e. Management of Voice and/or Data Networks
  - f. Network Optimization

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B. The following services can be included to provide a total managed service solution:

1. Hosted Solutions are offered to customers on a subscription basis and includes the IT infrastructure (hardware and software) and support services necessary to deliver the solution. Hosted services include technology services listed here:
  - a. Management of call processing architecture
  - b. Call Center or Contact Center Services
  - c. IVR/Auto-Attendant
  - d. Phone Systems Management (PBX, key system, etc.) or Integration
  - e. Management of Voice and/or Data Networks
  - f. Network Optimization
2. Requirements Development
3. Integration Services
4. SLA's and Performance Metrics
5. Reporting
6. Asset Management
7. Project management
8. Operations
9. Support Services
  - a. Move, Add, Changes (MACs)
  - b. Solution Design
  - c. Solution Software and Licenses
  - d. Network Readiness Assessment and Optimization
  - e. Transition and Termination Services
  - f. Break/Fix and Maintenance
  - g. Help/Support Desk Services
  - h. Training

C. Excluded Telecommunications Service Offerings

**Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001. The following services were awarded under the TEX-AN Next Generation Procurement:**

1. Long Distance Services
2. Internet Services (including SOHO)
3. Voice over Internet Protocol (VoIP)
4. Local Voice Service
5. Fixed Satellite
6. Access and Transport

DIR reserves the right to include or exclude in a resulting Contract any services offered in a vendor's response.

DIR Customers acquiring Managed Services for Telecommunications under a contract will be required to execute a Statement of Work directly with a Vendor. The Customer will be required to negotiate additional terms and conditions and specific requirements as needed

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directly with a Vendor. Terms and Conditions stated in an SOW shall not weaken a term or condition as stated within a DIR services contract.

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

**2.3. Electronic and Information Resources (EIR) Accessibility**

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency Customers must procure products that comply with the Accessibility Standards defined in the Texas Administrative Code, 1 TAC 206 and 1 TAC 213, when such Products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accordingly, Vendor must provide electronic and information resources and associated Product documentation and technical support that comply with these Accessibility Standards in each awarded Statement of Work (SOW). Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org:8080/dotAsset/5644ecd2-5024-417f-bc23-a52650f47ef8.doc>.

**2.4. Form of Contract**

**2.4.1 Sample Contract and Terms; Negotiation**

The final terms and conditions of any contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that shall be included in any awarded contract are contained in the sample *Contract for Services* attached as “Bid Package 3” and the *Standard Terms and Conditions for Services Contracts* attached as “Bid Package 4” to the posting for this RFO, requisition number DIR-TSO-TMP-262, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>.

**2.4.2 Proposed Changes and Exceptions**

**Caution: Vendors’ Responses may be disqualified if their exceptions are excessive, or if they except to non-negotiable terms, as described below.** Item 16 of Exhibit A contains the format for Vendor to note any exception to any provision, term, or condition specified in the *Contract for Services* and *Standard Terms and Conditions for Services Contracts*. Vendor should provide any proposed changes to contract language in redline in the “Proposed Language (redline)” column of the chart in Item 16 of Exhibit A. **Vendors may request exceptions to standard contract terms and conditions (other than those that DIR has identified as non-negotiable); however (1) where noted, exceptions to certain terms and conditions will not be allowed. If Vendor is unable to comply with these provisions, the Vendor’s response may be subject to disqualification from further consideration for this solicitation. (2) the number and significance of exceptions taken will be taken into consideration by DIR, and (3) DIR in its discretion may or may not accept the Vendor’s requested exceptions, and (4) DIR, in its sole direction, may determine that material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) render the Offer non-responsive and may result in rejection of the bid without further consideration.** An explanation as to why the Vendor cannot comply with the provision, term, or condition and proposed alternative language **must** be included in the response. If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at

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some later date.

DIR anticipates a contract term of two years with two, one-year optional extensions to be exercised by DIR at its discretion. In the event of prolonged contract negotiations due to the number and/or significance of exceptions taken, lack of Vendor responsiveness or other failure to close contract negotiations that are not due to a failure on the part of DIR, DIR may in its discretion offer Vendor a shorter contract term.

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

### 3. General Information

#### 3.1. Point of Contact

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

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

#### 3.2. Contact with DIR Staff

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

#### 3.3. Anticipated Schedule

##### 3.3.1 RFO Schedule

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. DIR reserves the right to modify these dates at any time. Prospective Vendors will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

<b>Date/Time</b>	<b>Activity</b>
February 15, 2017	Publish RFO on Electronic State Business Daily
February 23, 2017 2:30 pm CT	Optional Vendor Conference
February 27, 2017 2:30 pm CT	Deadline for submitting questions
March 21, 2017 4:00 pm (CT)	Deadline for DIR to receive Vendor



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	references
March 8, 2017 5:00 pm (CT)	Deadline for posting answers to questions on the ESBD
<b>March 21, 2017 4:00 pm (CT)</b>	<b>Deadline for submitting Responses to RFO</b>
March 22, 2017-through completion	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

### **3.3.2 Vendor Conference**

An optional Vendor Conference will be held on the date and time specified in RFO Section 3.3.1 above at the location listed below. Please bring a copy of the RFO to the Vendor Conference, as DIR will only supply a limited amount of copies.

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

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

#### **Webinar Information:**

The Vendor Conference will be available live via the web. **To participate in this live interactive Webcast, you must register by going to:**

<https://attendee.gotowebinar.com/register/5510483275799843586>

### **3.3.3 Written Questions and Official Answers**

Vendors shall submit all questions regarding this RFO by fax, e-mail, or in writing to the Point of Contact listed in Section 3.1. **Questions regarding this RFO will be accepted until the date and time specified above in Section 3.3.1, RFO Schedule.** Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-262, on the Electronic State Business Daily (ESBD), <http://esbd.cpa.state.tx.us/>. DIR reserves the right to amend answers prior to the offer submission deadline.

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

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**3.4. Historically Underutilized Businesses**

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

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

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

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

**3.4.1 HUB Subcontracting Plan**

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. The HUB Goal for this RFO is **26.0%**. **ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBS. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION.** The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are attached to this RFO as Exhibit C. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that Vendors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Vendor for more than five years. If the Vendor does not plan to subcontract, Vendor must state that fact in their plan. An original, signed paper copy of the HSP must be submitted in an envelope that is separate from the rest of the proposal. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.

**3.4.2 HUB Continuing Performance**

Any contracts awarded as a result of this RFO shall include reporting responsibilities

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related to HUB subcontracting. Awarded Vendors may not change any subcontractor without submitting a revised HUB Subcontracting Plan (HSP). Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation.

**3.4.3 HUB Resources Available**

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Website at: <https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>. For additional information, contact the CPA's HUB program office at [StatewideHUBProgram@cpa.texas.gov](mailto:StatewideHUBProgram@cpa.texas.gov). If Vendors know of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

**3.5. Vendor Qualifications**

**3.5.1 Authorized Vendors**

Vendors who respond to this RFO must be a Vendor who will sell directly to Customers through a DIR Communications Technology contract.

**3.5.2 Federal Requirements**

1) State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Vendor listed in the prohibited Vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Vendor awarded a Contract as a result of this RFO must agree that if at any time during the term of the contract the Vendor is listed on the Terrorism List, the Vendor shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure any Vendor awarded a contract as a result of the RFO remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the contract without recourse in the event Vendor becomes listed on the Terrorism List.

2) Should any Vendor or its principals awarded a Contract as a result of this RFO become suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration, the Vendor's contract will be terminated without recourse.

3) Vendor shall comply with the requirements of the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

**3.5.3 Vendor Performance and Debarment**

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

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Web site at:

<https://www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>

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

Vendor shall disclose, for itself and on behalf of all of its Subcontractors, in its response to Section 19 of Exhibit A to Bid Package 1 of the RFO, all of the following:

- 1) Any current Key Personnel, as defined in Section 2.2 of the RFO, of Vendors who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and
- 2) Any proposed Vendor Key Personnel, as defined in Section 2.2 of the RFO, assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.
- 3) Vendors will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendors will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

**3.6. Response Deadline and Submission Requirements**

Vendors are invited to submit responses in accordance with the requirements outlined in this document. Responses must be received by DIR on or before **the date and time specified in Section 3.1 of this RFO. No late responses will be reviewed.** Responses must be hand-delivered or mailed to the submittal address listed in Section 3.7.1. No facsimile or e-mail responses shall be accepted.

**3.6.1 Official Timepiece**

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

**3.6.2 Hand Delivery of Responses**

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

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

Due to the potential for delays, DIR encourages the use of courier deliver services, however delivery of responses via United States Postal Service is acceptable. Responses

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must be received, not post-marked, by the response deadline and, due to the State's mail processing procedures, this method may cause a delay in delivery to the DIR Purchasing Office. DIR will not be responsible for any delays associated with this method of delivery.

**3.7. Response Format and Contents**

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

Responses should be addressed to:

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

USPS Delivery Only – please refer to Section 3.6.3  
Department of Information Resources  
P.O. Box 13564  
Austin, Texas 78711-3564

The external packaging of the response must reference "RFO DIR-TSO-TMP-262" and must include the name and address of the Vendor submitting the response.

**3.7.2 Number of Copies**

Each Vendor must submit the complete response as follows:

- a. One (1) signed original (clearly marked) of the complete response, including one (1) signed original of the HUB Subcontracting Plan;
- b. One (1) signed original of the HUB Subcontracting Plan in a separate envelope;
  1. Two (2) USB flash drives (**clearly marked with Vendor name**) containing the following;
- c. One (1) USB drive containing an electronic folder labeled "Complete Vendor Response" that shall contain the entire Vendor's response.
- d. One (1) USB drive containing a labeled electronic folder with any and all response materials, which Vendor asserts are confidential or proprietary\*; and a labeled electronic folder containing all non-proprietary/confidential and non-copyrighted materials in the Vendor's response\* (redacted copy for public release).

\* If Vendor's response does not contain such materials, then USB drive(s) for these items are not required. DIR will release the non-proprietary/confidential and non-copyrighted version if DIR receives a Public Information Request. Unless Vendor specifically identifies proprietary, confidential or copyrighted material as required, DIR will assume all information is available for public disclosure.

Paper responses must be bound in a three-ring binder and the cover of the binders must reference "DIR-TSO-TMP-262" and include the name and address of the responding Vendor.

Each USB drive must be clearly marked as to its contents. **The response materials on each USB drive must be compatible with Microsoft Office.** All materials must be submitted in an editable format (e.g., Microsoft Word, Microsoft Excel). Do not submit

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electronic materials in PDF format. If there are any disparities between the contents of the printed response and any of the response materials on USB drives, the contents of the signed original printed response will take precedence.

NOTE: USB drive(s) must be securely fastened to the three-ring binder.

**3.7.3 Mandatory Response Contents**

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

- 1) Vendor Information – Exhibit A of this RFO  
This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.
- 2) List of Vendor’s Cancelled Contracts – Bid Package 1, Attachment 1
- 3) Release of Liability Form for References – Bid Package 1, Attachment 2
- 4) Contract Support Plan - Exhibit B of this RFO  
Vendor must provide a plan that describes the Vendor’s ability and strategy for promoting and supporting the contract, if awarded.
- 5) HUB Subcontracting Plan Forms – Exhibit C of this RFO  
All Vendors, **INCLUDING THOSE WITH HUB DESIGNATION AND THOSE THAT DO NOT PLAN TO USE SUBCONTRACTORS**, must submit a HUB Subcontracting Plan. HUB Subcontracting Plan Forms are provided in Exhibit C. Refer to Section 3.4 for more information regarding HUB subcontracting. **Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors. The paper copy of the HSP must be submitted in a separate envelope.**
- 6) Vendor Experience Form – Bid Package 2

**3.7.4 References**

Vendor must send the Vendor Reference Questionnaire (See Bid Package 5) to three (3) companies or government agencies. At least one of the engagement customers listed in Bid Package 2, Vendor Experience, must be one of the references in the Vendor Reference Questionnaire, Bid Package 5. Instructions are included in Bid Package 5. DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of “0” for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. Should this occur, the reference will be scored with a zero (0).

**3.8. Rejection of Responses**

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

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

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

Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-262 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. It is the responsibility of Vendors to monitor the web site for addenda. Vendor's failure to periodically check the ESBD will in no way release the vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

**3.10. Pre-agreement Costs**

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

**3.11. Ownership of Responses**

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

**3.12. Public Information**

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. Vendor may not mark its complete proposal "copyrighted" or mark every page as proprietary or confidential but if a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the Vendor must specify which exception(s) are applicable and provide detailed reasons substantiating the exception(s).

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

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

## 4. Evaluation, Negotiations, and Award

### 4.1. Evaluation of Responses

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

### 4.2. Evaluation Criteria

#### 4.2.1 Pass/Fail Criteria

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

- a. DUNS Number and report is a Pass/Fail review conducted by the Finance Group (Exhibit A, Item 11)
- b. Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
  - o A score of less than 90% in the Vendor Performance System;
  - o Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports,
  - o Having purchase orders that have been cancelled in the previous 12 months for non-performance (including but not limited to late delivery, etc.).
- c. Completion of HUB Subcontract Plan (Exhibit C).

#### 4.2.2 Evaluation Criteria

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

- o **65% - Past Engagement Experience and Vendor's history and experience in providing the services requested, including information provided regarding Cancelled Contracts in Exhibit A, Attachment 1.**
  - Exhibit A of Bid Package 1
  - Bid Package 2, Vendor Experience
- o **20% Contract Marketing Plan** - Vendor's plan for supporting the Contract, if awarded. - Exhibit B of Bid Package 1
- o **15% - Vendor References.** Bid Package 5 will be submitted directly to DIR by



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each Vendors' reference

At least one of the engagement customers listed in Bid Package 2, Vendor Experience, must be one of the references in the Vendor Reference Questionnaire, Bid Package 5.

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

**4.3. Oral Presentations, Best and Final Offer**

DIR in its discretion shall make the determination whether to request oral presentations and/or engage in the Best and Final Offer process. Both oral presentations and the Best and Final Offer process, if held, will also be scored.

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

**4.4. Negotiations**

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

**4.5. Award of Contract**

DIR Executive Management shall make the decision to award any contracts, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final. Any award for this RFO shall be posted under requisition number DIR-TSO-TMP-262 on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>, upon execution of a contract with one or more Vendors. All responses and working papers pursuant to this RFO are not subject to disclosure under the Public Information Act until all contracts resulting from this RFO have been executed.

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

**4.6. Vendor Protest Procedures**

Any Vendor who is aggrieved in connection with this RFO, evaluation, or award of a contract may formally protest to DIR in accordance with the Vendor protest procedures posted on the DIR Web site at: <http://dir.texas.gov/View-Information-For-Vendors/Pages/Content.aspx?id=21>

**END OF RFO**

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Exhibit A  
Vendor Information**

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

1) Company Name: \_\_\_\_\_

2) Comptroller of Public Accounts Vendor Identification Number: \_\_\_\_\_

3) Principal place of business

Address:

City:

State:

Zip Code:

4) Facility responsible for servicing the contract

Address:

City:

State:

Zip Code:

5) Contact Person regarding Vendor's response to the RFO

Name:

Address:

City, State, Zip:

Phone Number:

Fax:

Email:

6) Contact Person responsible for contract negotiation

Name:

Address:

City, State, Zip:

Phone Number:

Fax:

Email:

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

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

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

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- 9) Provide a detailed history of your company.
- 10) Provide the number of years your company has sold the products/services requested in this RFO.
- 11) Provide the number of years your company has sold the products/services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.
- 12) Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the products/services listed in this RFO from your company within the last 12 months.  
\_\_\_\_\_Yes \_\_\_\_\_No

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

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

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

- 14) Indicate whether or not your company holds a contract with any entity or consortium authorized by Texas law to sell the products and services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.  
\_\_\_\_\_Yes \_\_\_\_\_No

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

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

- 16) List below by subsection all exceptions to the *Contract for Services* and *Standard Terms*

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*and Conditions for Services Contracts in redline form.* You must include the basis of your exceptions and provide proposed alternate language. **If Vendor fails to list exceptions in its response, Vendor shall not be permitted to submit exceptions to the same section during the negotiation process or thereafter. Vendor shall not redline the contract or Exhibit A. All exceptions must be listed in the chart below. Vendor shall not redline the contract or Appendix A. All exceptions must be listed in the chart below. Any terms and conditions attached to a response will not be considered unless specifically referred to in this solicitation and may result in disqualification.**

Section	Section Title	Explanation of Exception	Proposed Language (redline)

Vendor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

17) Proof of Financial Stability.

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

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

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

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

19) Statement of Compliance

- Checklist for the RFO

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

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

**All responses must be received by DIR on or before the date and time specified in Section 3.3.1 of this RFO. No late responses will be reviewed.**

Item	Check
Response addressed to: Department of Information Resources 300 W. 15th Street, Suite 1300 Austin, Texas 78701 Attn: Carrie Cooper	
External packaging references "RFO DIR-TSO-TMP-262"	
Package contains one (1) signed original (clearly marked) of the complete response with one (1) signed original HUB Subcontracting Plan	
Package contains one (1) additional signed original HUB Subcontracting Plan in a separate envelope	
Package contains four (4) clearly marked additional thumb drive copies of the complete response	
Package contains one (1) USB drive containing any and all response materials which Vendor asserts are confidential or proprietary (if required)	
Package contains one (1) USB drive containing any and all copyrighted materials in the Vendor's response (if required)	
Package contains one (1) USB drive containing any and all non-proprietary/confidential and non-copyrighted materials in the Vendor's response	
Paper responses are bound and the cover of the binders reference "DIR-TSO-TMP-262" and include the name and address of the responding Vendor	
<b>Mandatory Response Contents</b>	
Vendor Information - Exhibit A	
Contract Support Plan – Exhibit B	
HUB Subcontracting Plan Forms – Exhibit C – one signed copy in a separate envelope	
List of Vendor's Cancelled Contracts – Bid Package 1, Attachment 1	
Release of Liability Form for References – Bid Package 1, Attachment 2	
Vendor Experience Form – Bid Package 2	

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**B. Certification Statement**

The undersigned hereby certifies on behalf of insert company name here that RFO DIR-TSO-TMP-262 has been read and understood. In submitting its response insert company name here represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- iv) as of the date of signature below, Vendor is not listed in the prohibited Vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- v) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- vi) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vii) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
- (viii) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;
- (ix) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- (x) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (xi) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award; .Enter the name and Social Security Numbers for each person below (alternatively, if this section applies, Vendor may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

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

xii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State

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of Texas;

(xiii) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;

(xiv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;

(xv) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;

(xvi) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;

(xvii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;

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

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

\_\_\_\_\_  
Signature of Officer or Agent empowered to contractually bind the Vendor

\_\_\_\_\_  
Date

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**Exhibit B  
Contract Support Plan**

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

- 1) Describe your company's strategy for marketing and selling the services listed in this RFO to eligible DIR Customers.
  
- 2) Describe your company's strategy for providing:
  - a. sales,
  - b. order processing, and
  - c. support of eligible DIR Customers throughout the State of Texas.
  
- 3) Provide the projected total sales of the services listed in this RFO that your company anticipates making to eligible DIR Customers within the next 12 months. If available, show the projected sales breakdown between the following segments: State and Local Governments, Higher Education, and K-12.



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**Exhibit C**

**Historically Underutilized Business (HUB) Subcontracting Plan**

This form is separate and titled Bid Package 1- HUB Subcontracting Form

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**Attachment 1  
List of Vendor's Canceled Contracts**

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

RESPONDENT NAME:

---

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

COMPANY NAME (COMPANY NAME OF REFERENCE)		
COMPANY ADDRESS (Street, City, State, Zip Code)		
*CONTACT NAME / PHONE		

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*E-MAIL		
CONTRACT AWARD DATE:	OPERATIONS START DATE:	CONTRACT CANCELLATION DATE:
DESCRIPTION OF SERVICE:		
REASON FOR CANCELLATION:		

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

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

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**Attachment 2  
RESPONDENT RELEASE OF LIABILITY  
FOR REFERENCES**

**THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE (GENERAL REFERENCES IN ACCORDANCE WITH BID PACKAGE 5 AND CANCELLED CONTRACT REFERENCES) AND SUBMITTED WITH THE RESPONDENT'S PROPOSAL**

To company providing the reference:

*Enter name of company providing the reference here*

You are hereby requested to provide a business reference for:

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

to the:

Texas Department of Information Resources  
Solicitation Evaluation Team

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

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Respondent Signature)

\_\_\_\_\_  
(Respondent Printed Name)

\_\_\_\_\_  
(Respondent Title)

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
(Key Staff Printed Name)

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**STATEMENT OF WORK (SOW)**

**FOR**

**Managed Services for  
Telecommunication**

***Engagement Name***

***DIR Customer Name***

***DATE***

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## 1. Introduction

Describe the managed service to be delivered and the characteristics of the services at a summary level. The statement of work (SOW) is unique and distinct for each engagement.

## 2. Background

Explain why the Customer is contracting for this managed service. Provide useful information regarding the Customer organization, engagement history, future plans or any other relevant information regarding the work to be performed.

## 3. Electronic and Information Resources (EIR) Accessibility

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

Accordingly, **all Vendors must submit accurate, completed VPATs or links to completed VPATs located on manufacturer websites for each proposed Commercial Off the Shelf (COTS) product or product family, and Software as a Service(SAAS) offering included in the submitted statement of work.**

Vendors who do not already have completed VPATs should use the form located here: <http://www.itic.org/public-policy/accessibility>. Instructions on how to complete a VPAT® can be found on [DIR's website](#).

Vendors claiming that a proposed product or family of products is exempt from accessibility requirements must use a VPAT form to: (1) specify each exempt product or product family and indicate "Not Applicable" in the "Supporting Features" column of the Summary Table; (2) provide an explanation in the "Remarks" column of Summary Table. Vendors that claim their products are exempt from accessibility requirements must present that position to DIR as a question during the question and answer period of the solicitation.

For non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.), credible evidence of the Vendor's capability or ability to produce accessible electronic and information resources may be requested. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

## 4. Scope

### Sample Content

#### 4.1 Engagement-Based Services

1. Scope of work
2. Engagement risks, assumptions and constraints
3. Roles and responsibilities
4. Detailed description of managed service
5. Acceptance criteria
6. Engagement completion criteria
7. Engagement schedules to be achieved by vendor
8. Relevant quality processes that will apply, such as change management, acceptance, and risk and issue management

#### 4.2 Outsourced Services

9. Scope of services to be delivered
10. Acceptance criteria
11. Service-level objectives
12. Key performance indicators

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13. Service-level agreements (SLAs)
14. Service-level management

## 5. Services

### 5.1 Sample Content

**(Example – at a minimum, Customers should consider the following items when developing their SOW)**

- Managed Services must be provided on the dates specified. Any changes to the delivery date must have prior approval (in writing) by the Customer contract manager or designate.
- All managed services must be submitted in a format approved by the Customer contract manager.
- If the managed service cannot be provided within the scheduled time frame, the Vendor is required to contact the Customer contract manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
- A request for a revised schedule must be reviewed and approved by the Customer contract manager before placed in effect. Contract Terms and Conditions may dictate remedies, costs, and other actions based on the facts related to the request for a revised schedule.
- The Customer will complete a review of each submitted managed service within specified working days for the date of receipt
- A kickoff meeting will be held at a location and time selected by the Customer where the Vendor and its staff will be introduced to the Customer.

### 5.2 Sample Delivery Schedule

No.	Item	SOW Paragraph	Due Date	Recipient
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				

## 6. Reports and Meetings

**Sample Content (Example – at a minimum, Customers should consider the following items when developing their SOW)**

- The Vendor is required to provide the Customer contract manager with weekly written progress reports of this engagement. These are due to the Customer contract manager by the close of business on the *specify day* each week throughout the life of the project
- The progress reports shall cover all work performed and completed during the week for which the progress report is provided and shall present the work to be performed during the subsequent week.
- The progress report shall identify any problems encountered or still outstanding with an explanation of the cause and resolution of the problem or how the problem will be resolved.

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- The Vendor will be responsible for conducting weekly status meetings with the Customer contract manager. The meetings will be held on *specify day* of each week - at a time and place so designated by the Customer contract manager - unless revised by the Customer contract manager. The meetings can be in person or over the phone at the discretion of the Customer contract manager.

## **7. Service Level Agreement**

The items listed below are suggestions for areas to be considered for service levels and incorporated into the SOW service level agreement.

- A. Security (as defined by customer)
- B. Quality (as defined by customer)
- C. Availability (data, system, and components)
- D. Performance (transmission, response, or completion times)
- E. Meantime to Resolution (MTR)
- F. Business Continuity
- G. Required communications (meetings, reports, calls, emails)
- H. Required documents (plans, estimates, schedules, analyses)
- I. Degree of accuracy of estimates (schedule, budget, resources, total)
- J. Effective risk management and response (adherence to plans)
- K. Effective scope management and change control (adherence to plans)
- L. Data quality (fitness for use, accuracy, precision, completeness)
- M. Ad hoc query response (usually written in terms of averages)
- N. Reliability (queries generate same valid results)
- O. Consistency (calculations and definitions are consistent regardless of source or function)
- P. Acceptable usage (query controls)
- Q. Correct mapping of old to new (no functions or data lost that were not planned to retire)
- R. Previous software, system, or service retired on time

## **8. Period of Performance**

Specify the period of performance in which the Vendor will conduct and complete the work associated with the SOW.

## **9. Invoices**

Describe the Vendor's responsibilities for invoicing Customer including invoice content, frequency/schedule and instructions for submitting invoices. Payments will be made in accordance with Appendix A of the DIR-SDD-TMP-195 Contract.

## **10. Customer/Vendor-Furnished Equipment and Work Space**

Specify what equipment and/or work space the Customer will provide or the expectations of what the Vendor will provide.

## **11. 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.

## **12. Vendor Response**

**Sample Content (Example – at a minimum, Customers should consider the following items when developing their SOW)**

- a. All written managed services proposed must be phrased in terms and language that can be easily understood by non-technical personnel (e.g., laypersons without subject matter expertise)



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- b. All document managed services proposed must be in formats (hard copy and electronic) as specified by the Customer - at a minimum, the formats must be in industry accepted standards (e.g., MS Word, MS PowerPoint, MS Project)
- c. The Vendor must demonstrate its knowledge and expertise of the environment (e.g., platforms, software, applications, network, tools, etc.) for which work is to be performed
- d. All items of this agreement shall be done in accordance with the Service Level Agreement.

**Sample Content**

- e. Agreement to confidentiality and legal statements
- f. Vendor staff capabilities specific to this SOW:
  - a. Organization chart
  - b. Management team resumes
  - c. Key personnel resumes
- g. Vendor's services capabilities:
  - a. Outline of capability to deliver the required services, including process, functional and technical expertise
  - b. Agreed-on SOW for managed services
  - c. Engagement plans for project services or transition
- h. Project management plan addressing the tasks specified in the SOW

**13. Pricing**

The main purpose of this section is to detail the pricing for the deliverables-based services. Vendors should also provide a summary of any assumptions and exclusions.

**Sample Pricing Sheet**

Engagement No.	Engagement Name	Price

**14. Response Submission Requirements**

**Sample Content**

- i. SOW schedule of events: deadline for questions, deadline for answering questions, response due date
- j. Address for response submission
- k. Number of copies
- l. Mandatory response contents



# 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.



# HUB Subcontracting Plan (HSP)

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

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

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

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

**- - Agency Special Instructions/Additional Requirements - -**

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

**SECTION 1: RESPONDENT AND REQUISITION INFORMATION**

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_  
 (mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**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 §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

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

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods 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 <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		%	%	%

(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: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
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: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**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.

[Empty box for justification text]

**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.

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.

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

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

**IMPORTANT:** If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" 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-a.pdf>

## SECTION A-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 A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-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/tpasscmlsearch/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 style="color: red;">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		\$	%
	<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		\$	%
	<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		\$	%

**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 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.

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

Rev. 10/16

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**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.

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

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

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

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



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

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

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

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

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

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



# HUB Subcontracting Opportunity Notification Form

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

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

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

## SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: \_\_\_\_\_  
 Point-of-Contact: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

State of Texas VID #: \_\_\_\_\_  
 Phone #: \_\_\_\_\_  
 Fax #: \_\_\_\_\_

## SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: \_\_\_\_\_  
 Point-of-Contact: \_\_\_\_\_  
 Requisition #: \_\_\_\_\_

Phone #: \_\_\_\_\_  
 Bid Open Date: \_\_\_\_\_  
(mm/dd/yyyy)

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

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

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

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

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

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

### 2. Subcontracting Opportunity Scope of Work:

### 3. Required Qualifications:

- Not Applicable

### 4. Bonding/Insurance Requirements:

- Not Applicable

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

- Not Applicable



## **Bid Package 2**

**Department of Information Resources**

**Managed Services for Telecommunications**

**Vendor Experience**

**Department of Information Resources  
Managed Services for Telecommunications  
Request for Offer DIR-TSO-TMP-262  
Bid Package 2: Vendor Experience**

**1. Vendor Experience Response Instructions**

In the section provided below, Vendor shall provide detailed descriptions of Managed Services for Telecommunications engagements referenced as part of their proposal. Vendors are to provide three (3) managed services for telecommunications engagements initiated within the last three (3) years. If Vendor has less than three (3), leave the remaining engagements blank. All blank engagements will be scored as a zero (0). **The information must be provided for three (3) separate engagements which were initiated within the last three (3) years (i.e., when the engagement work commenced, not the contract execution date).**

Vendors should use engagements reflecting the customer base in which they generally work (for example: state agency, institutions of higher education, local governments and independent school districts).

Vendors must describe and/or demonstrate how their experience supports their qualifications. The Vendor's response may include applicable engagements that specifically address the experience requested in this Bid Package 2. Additional descriptive materials should be clear, concise, and specific to the engagement experience being described.

Vendors shall respond to each element in the corresponding description column. Vendors may use the comments column to indicate if a listed role was not part of the scope for the engagement.

Attachments are acceptable; attachments should be clearly marked and referenced.

DIR reserves the right to contact any provided engagement contact named for further information/clarification.

**Detailed Experience Spreadsheet**

<b>Project Experience</b>	<b>Description :</b> Vendors must fully respond to the elements, as requested, for each engagement.	<b>Comments:</b> Vendors may use this column to indicate that the listed role was not a part of the scope for the engagement submitted
<p>A. Management Services is the management of customer owned equipment or vendor provided equipment in support of the following technology services:</p> <ul style="list-style-type: none"> <li>a. Management of call processing architecture</li> <li>b. Call Center or Contact Center Services</li> <li>c. IVR/Auto-Attendant</li> <li>d. Phone Systems Management (PBX, key system, etc.) or Integration</li> <li>e. Management of Voice and/or Data Networks</li> <li>f. Network Optimization</li> </ul> <p>B. The following services can be included to provide a total managed service solution:</p> <ul style="list-style-type: none"> <li>1. Hosted Solutions are offered to customers on a subscription basis and includes the IT infrastructure (hardware and software) and support services necessary to deliver the solution. Hosted services include technology services listed here:                             <ul style="list-style-type: none"> <li>a. Management of call processing architecture</li> <li>b. Call Center or Contact Center Services</li> <li>c. IVR/Auto-Attendant</li> <li>d. Phone Systems Management (PBX, key system, etc.) or Integration</li> <li>e. Management of Voice and/or Data Networks</li> <li>f. Network Optimization</li> </ul> </li> </ul>		

<ul style="list-style-type: none"><li>2. Requirements Development</li><li>3. Integration Services</li><li>4. SLA's and Performance Metrics</li><li>5. Reporting</li><li>6. Asset Management</li><li>7. Project management</li><li>8. Operations</li><li>9. Support Services<ul style="list-style-type: none"><li>a. Move, Add, Changes (MACs)</li><li>b. Solution Design</li><li>c. Solution Software and Licenses</li><li>d. Network Readiness Assessment and Optimization</li><li>e. Transition and Termination Services</li><li>f. Break/Fix and Maintenance</li><li>g. Help/Support Desk Services</li><li>h. Training</li></ul></li></ul>		
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1. Engagement 1 Experience (Describe in detail for each element):	DIR reserves the right to contact any provided engagement contact names for further information/clarification
<p>1.1. Project Information</p> <p>1.1.1. Client Name</p> <p>1.1.2. Contact Name</p> <p>1.1.3. Contact Phone Number</p> <p>1.1.4. Contact E-mail</p> <p>1.1.5. Engagement Name and Scope (Should reference one of the services listed above)</p> <p>1.1.6. Engagement Schedule (start date and end date- (mm/yyyy) )</p> <p>1.1.7. Engagement Budget (original and final - for this specific referenced engagement) Describe any variance, if applicable</p> <p>1.1.8. Total number of vendor FTEs on this engagement on this project</p> <p>1.1.9. Total number of subcontractor FTEs on this engagement on this project</p> <p>1.1.10. Describe, in general terms, the goals and objectives of the engagement and your opinion of your performance</p> <p>1.1.11. Describe your procedures for change management throughout the engagement.</p> <p>1.1.12. Provide Communication Plan (what, who, and when)</p>	
1.2. Lessons learned during engagement	
1.3. Performance measures/service levels contractually required for this engagement reported to the customer. Include your performance against those service levels and performance measures.	
1.4. Security and authentication responsibilities and activities, if applicable	
1.5. Disaster Recovery responsibilities and activities, if applicable	

<p><b>2. Project 2 Experience (Describe in detail for each element):</b></p>	<p>2.1. Project Information</p> <p>2.1.1. Client Name</p> <p>2.1.2. Contact Name</p> <p>2.1.3. Contact Phone Number</p> <p>2.1.4. Contact E-mail</p> <p>2.1.5. Engagement Name and Scope</p> <p>2.1.6. Engagement Schedule (start date and end date- (mm/yyyy) )</p> <p>2.1.7. Engagement Budget (original and final - for this specific referenced engagement) Describe any variance, if applicable</p> <p>2.1.8. Total number of vendor FTEs on this engagement on this project</p> <p>2.1.9. Total number of subcontractor FTEs on this engagement on this project</p> <p>2.1.10. Describe, in general terms, the goals and objectives of the engagement and your opinion of your performance</p> <p>2.1.11. Describe your procedures for change management throughout the engagement.</p> <p>2.1.12. Provide Communication Plan (what, who, and when)</p> <p>2.2. Lessons learned during engagement</p> <p>2.3. Performance measures/service levels contractually required for this engagement reported to the customer. Include your performance against those service levels and performance measures.</p> <p>2.4. Security and authentication responsibilities and activities, if applicable</p> <p>2.5. Disaster Recovery responsibilities and activities, if applicable</p>
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<p><b>3. Project 3 Experience (Describe in detail for each element):</b></p>	
<p>3.1. Project Information</p>	
<p>3.1.1. Client Name</p>	
<p>3.1.2. Contact Name</p>	
<p>3.1.3. Contact Phone Number</p>	
<p>3.1.4. Contact E-mail</p>	
<p>3.1.5. Engagement Name and Scope</p>	
<p>3.1.6. Engagement Schedule (start date and end date- (mm/yyyy) )</p>	
<p>3.1.7. Engagement Budget (original and final - for this specific referenced engagement) Describe any variance, if applicable</p>	
<p>3.1.8. Total number of vendor FTEs on this engagement on this project</p>	
<p>3.1.9. Total number of subcontractor FTEs on this engagement on this project</p>	
<p>3.1.10. Describe, in general terms, the goals and objectives of the engagement and your opinion of your performance</p>	
<p>3.1.11. Describe your procedures for change management throughout the engagement.</p>	
<p>3.1.12. Provide Communication Plan (what, who, and when)</p>	
<p>3.2. Lessons learned during engagement</p>	
<p>3.3. Performance measures/service levels contractually required for this engagement reported to the customer. Include your performance against those service levels and performance measures.</p>	
<p>3.4. Security and authentication responsibilities and activities, if applicable</p>	
<p>3.5. Disaster Recovery responsibilities and activities, if applicable</p>	

**Department of Information Resources  
Managed Services for Telecommunication  
Request for Offer DIR-SDD-TMP-262**

**ATTACHMENT 3**

**Department of Information Resources**

**Managed Services for Telecommunications  
Contract**

**Sample Statement of Work**

*(this document will be incorporated into final contracts for Managed  
Service for Telecommunications)*

STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR SERVICES

*VENDOR LEGAL ENTITY NAME*

**1. Introduction**

**A. Parties**

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

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-262, on *POSTING DATE*, for Managed Services for Telecommunications. *DIR subsequently issued a BAFO opportunity on BAFO DATE*. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-262 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, Service Agreement; *Exhibit 1, Vendor’s Response to BAFO, including all addenda; Exhibit 2, the BAFO, including all addenda; Exhibit [3] 2, Vendor’s Response to RFO DIR-TSO-TMP-262, including all addenda; and Exhibit [4] 3, RFO DIR-TSO-TMP-262, 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 *Exhibit 1, then Exhibit 2*, then *Exhibit 3*, and finally *Exhibit 4*. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

### 3. Service Offerings

Services available under this Contract are limited to the designated telecommunications managed services as specified below. Vendor may incorporate changes to their services offerings; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. The designated services are offered only as components of comprehensive suites of telecommunications managed services. One or more of the designated service offerings (i) may require contracting for service components of a comprehensive suite of telecommunications managed services or (ii) may be unavailable as service components, at the discretion of the Vendor.

***Management of telecommunications services as set forth below:***

A. Management Services is the management of customer owned equipment or vendor provided equipment in support of the following technology services:

- a. Management of call processing architecture
- b. Call Center or Contact Center Services
- c. IVR/Auto-Attendant
- d. Phone Systems Management (PBX, key system, etc.) or Integration
- e. Management of Voice and/or Data Networks
- f. Network Optimization

B. The following services can be included to provide a total managed service solution:

1. Hosted Solutions are offered to customers on a subscription basis and includes the IT infrastructure (hardware and software) and support services necessary to deliver the solution. Hosted services include technology services listed here:
  - a. Management of call processing architecture
  - b. Call Center or Contact Center Services
  - c. IVR/Auto-Attendant
  - d. Phone Systems Management (PBX, key system, etc.) or Integration
  - e. Management of Voice and/or Data Networks
  - f. Network Optimization
2. Requirements Development
3. Integration Services
4. SLA's and Performance Metrics
5. Reporting
6. Asset Management
7. Project management
8. Operations
9. Support Services
  - a. Move, Add, Changes (MACs)
  - b. Solution Design
  - c. Solution Software and Licenses
  - d. Network Readiness Assessment and Optimization

DIR Contract No. DIR-TSO-XXXX

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

- e. Transition and Termination Services
- f. Break/Fix and Maintenance
- g. Help/Support Desk Services
- h. Training

C. Excluded Telecommunications Service Offerings

**Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001. The following services were awarded under the TEX-AN Next Generation Procurement:**

- 1. Long Distance Services
- 2. Internet Services (including SOHO)
- 3. Voice over Internet Protocol (VoIP)
- 4. Local Voice Service
- 5. Fixed Satellite
- 6. Access and Transport

**4. Pricing**

**A. Customer Price**

Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer’s Statement of Work.

**B. DIR Cost Recovery Fee**

The cost recovery fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**5. DIR Cost Recovery Fee**

**A.** The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is zero-point seventy-five percent (0.75%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$750.

**B.** All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR.

**6. Notification**

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

If sent to the State:

Dana L. Collins, CTPM, CTCM

Director, Enterprise Contract Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4000  
Facsimile: (512) 475-4759  
Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:

*Vendor Representative*

*Company Name*

*Address*

*City, State Zip*

Phone: ( ) -

Facsimile: ( ) -

Email:

## 7. Managed Services Requirements

1. The centralized telecommunications system for the state of Texas is known as TEX-AN. The current technological platform of TEX-AN is known as TEX-AN NG. The TEX-AN NG architecture provides a solid statewide communications infrastructure that is adaptable to changing requirements and can incorporate new and emerging technologies. The TEX-AN NG platform provides unified, scalable, redundant, flexible, and extremely cost-effective networking solutions. TEX-AN NG provides voice and data services and features:

Voice Services:

- Toll-Free Service
- Long Distance Service
- Directory Assistance
- Dedicated circuit access

Data Services:

- Frame Relay/Asynchronous Transfer Mode (ATM)
- MPLS (Multiprotocol Label Switching)
- Access Services
- Internet Access
- Point-to-Point circuits
- DSL
- SOHO
- Fixed Satellite

Vendors must utilize the TEX-AN Network for any transport services included in their managed service solution. These services and associated fees should be included by the

**DIR Contract No. DIR-TSO-XXXX****Vendor Contract No. \_\_\_\_\_**

vendor in a managed service solution proposal as required for a Customer. Any transport services required for the managed service solution will be ordered by the customer from DIR. The Customer is required, as the eligible purchasing entity, to utilize the current TEX-AN or Co-op Contracts and procedures to directly purchase the services from DIR.

In addition to its primary services, DIR offers Co-op and Telecom contracts for communications services. These contracts are awarded on behalf of the state according to state competitive bidding requirements, and are designed to satisfy user requirements for easy-to-use communications services contracts. The comprehensive suite of products and services offered by these contracts includes:

- Interpreter Services
- Local Telephone Services
- Wireless/Cellular Services
- Pagers and Paging Services
- Technology Based Conferencing

These services and associated fees should be included by the vendor in a managed service solution proposal as required for a customer. The customer is required, as the eligible purchasing entity, to utilizing the current TEX-AN NG, Co-op Contracts and Telecom procedures to directly purchase the services from DIR.

2. Vendor shall prepare and provide each customer with a managed service solution proposal. The proposal shall include all services proposed by Vendor which are included in this contract, as well as all Excluded Service Offerings and associated fees as required for a Customer to contract for a complete solution.
3. Vendor shall make every effort to provide value to DIR Customers through well-defined requirements and project scheduling that meet the stated objectives and business goals for managed service customers. Vendors must create Statements of Work (SOW) under this Contract to document customer expectations; requirements; milestones for deliverables and activities; and payment schedules.
4. Vendor shall provide a copy of Customers proposed SOW and solution design documents to a designated contact at DIR no less than fifteen (15) days prior to presenting the final managed services solution proposal to the customer. The plan for the TEX-AN NG network connectivity in the solution design must be approved by DIR. The approval shall occur as soon as practicable based on the date of submission.
5. Vendor will work with DIR to facilitate the communication and management of the contract provisions outlined in this document for reviews, reporting, purchasing and approvals.

**DIR Contract No. DIR-TSO-XXXX**

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

6. Vendor shall employ performance-based managed services for highly reliable customer solutions that meet or exceed customer expectations and performance metrics. Performance metrics and SLA's will meet, as a baseline, or exceed industry standards.
7. Vendor shall adhere to the DIR Security Policies included in 1 TAC Chapter 202, Information Security Standards and be consistent with the best practices as outlined in the State Enterprise Security Plan. Vendor must convey the established security standards to the customer, as well as any additional vendor provided security services. The State Enterprise Security Plan and other guiding security policies are located on the DIR web site.
8. Vendor will execute a direct contract with the customer that accurately reflects the resources required for the total project and contains the resources and prices for services the customer is required to purchase directly from DIR for the successful implementation of the proposed solution ("Supplemental Agreements"). DIR will bill the customer directly for the services purchased from TEX-AN NG. Vendor is responsible for preparing and properly billing the customer for its services according to milestones or other scheduled triggering events.

**8. Statement of Work**

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix C of this Contract. 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 with this Contract.

**9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.**

No exceptions have been agreed to by DIR and Vendor.



**DIR Contract No. DIR-TSO-XXXX**

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

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

***VENDOR NAME***

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

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

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

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

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

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

**Name:** Wayne Egeler

**Title:** CTS Director

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

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

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

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**Standard Terms and Conditions for Services Contracts**

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

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

**1. Contract Scope**

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

**2. No Quantity Guarantees**

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

**3. Definitions**

**A. Customer** - includes any Texas state agency, as defined by Section 2151.002, Texas Government Code to mean:

- 1) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;
- 2) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or
- 3) a university system or an institution of higher education as defined by Section 61.003, Education Code, except a public junior college and entities other than state agencies, as defined by Section 2170.004, Texas Government Code to mean:
  - 1) each house of the legislature;
  - 2) a legislative agency;
  - 3) an agency that is not a state agency as defined by Section 2151.002;
  - 4) a political subdivision, including a county, municipality, or district;
  - 5) a private institution of higher education accredited by a recognized accrediting agency, as defined by Section 61.003, Education Code, that:
    - (A) engages in distance learning, as defined by Section 57.021, Utilities Code; and
    - (B) receives federal funds for distance learning initiatives; and
- 6) an assistance organization, as defined by Section 2175.001, Texas Government Code to mean:
  - i. A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
  - ii. A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;

## **Appendix A**

### **Standard Terms and Conditions for Services Contracts**

- iii. 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;
- iv. 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;
- v. A local workforce development board created under Section 2308.253;
- vi. A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- vii. 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;
- viii. A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- ix. A nonprofit organization that provides affordable housing.

**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.

**Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.

**CPA** – refers to the Texas Comptroller of Public Accounts.

**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.

**Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.

**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).

**State** – refers to the State of Texas.

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

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

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

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

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

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

**C. Invalid Term or Condition**

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

**D. Assignment**

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

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**E. Survival**

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

**F. Choice of Law**

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

**G. Limitation of Authority**

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

**H. Proof of Financial Stability**

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

**5. Intellectual Property Matters**

**A. Definitions**

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



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(v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

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

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

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

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

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#### **B. Ownership.**

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

#### **C. Further Actions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services

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provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

#### **6. Product Terms and Conditions**

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

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

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

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

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

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

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

**7. Contract Fulfillment and Promotion**

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

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

**B. Use of Order Fulfillers**

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

**1) Designation of Order Fulfillers**

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

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

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

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

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

**2) Changes in Order Filler List**

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must

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make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 7.B.1.a above.

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

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

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

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

## **D. Customer Site Preparation**

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

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

### **1) Vendor Website**

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a website specific to the service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include the services offered, service specifications, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, and instructions for the SOW process inclusive of DIR's review and approval. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

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

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

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

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide

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verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

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

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

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

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

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

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

### **F. DIR Logo**

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

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

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



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

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

#### **I. Orientation Meeting**

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

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

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

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

#### **A. Telecommunication Fees and Surcharges and Taxes**

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

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

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

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

**B. Other Fees**

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

**C. DIR Cost Recovery Fee**

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

**D. Shipping and Handling Fees**

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

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

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

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

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

#### **G. Purchase Orders**

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

#### **H. Invoices**

- 1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.
- 2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.
- 3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

#### **I. Payments**

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

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**9. Contract Administration**

**A. Contract Managers**

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

**1) State Contract Manager**

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

**2) Vendor Contract Manager**

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

**B. Reporting and Administrative Fees**

**1) Reporting Responsibility**

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

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

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. If the 15<sup>th</sup> calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the administrative fee due for the reporting period, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with

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this section.

**3) Historically Underutilized Businesses Subcontract Reports**

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

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

**4) DIR Administrative Fee**

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. DIR may change the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment.

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

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

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

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

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

**C. Records and Audit**

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

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

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

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

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

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**D. Contract Administration Notification**

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

**10. Vendor Responsibilities**

**A. Indemnification**

**1) INDEPENDENT CONTRACTOR**

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

**2) Acts or Omissions**

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

**3) Infringements**

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

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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.

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

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

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



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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**

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

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

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- (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (x) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xi) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xii) have identified all current or former, within the last five years, employees of the State assigned to work on the DIR Contract 20% or more of their time and have disclosed them to DIR and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xiii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiv) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvi) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code.

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

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require

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### **Standard Terms and Conditions for Services Contracts**

due to state and federal law (e.g., privacy and security requirements).

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

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

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

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

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

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

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

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

#### **H. Confidentiality**

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and

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### **Standard Terms and Conditions for Services Contracts**

with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

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

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

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

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

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

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

#### **L. Overcharges**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1,

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et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

**M. Prohibited Conduct**

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

**N. Required Insurance Coverage**

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

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

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

**2) Workers' Compensation Insurance**

**WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY**

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

**3) Business Automobile Liability Insurance**

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

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

**O. Use of State Property**

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

**P. Immigration**

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

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

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3,

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2014, the Contractor 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 employed during the term of this Contract to perform duties within Texas; and
- all persons (including subcontractors) assigned by the Contractor to perform work pursuant to this Contract.

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

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

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

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

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

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

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

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

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

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

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

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department

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of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**V. Accessibility of Public Information**

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

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

**W. Vendor Reporting Requirements**

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

**11. Contract Enforcement**

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

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

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

3) State agencies are required by rule (34 TAC §20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

**B. Termination**

**1) Termination for Non-Appropriation**

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

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317,



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

Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

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

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

**2) Absolute Right**

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

**3) Termination for Convenience**

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

**4) Termination for Cause**

**a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter

## **Appendix A**

### **Standard Terms and Conditions for Services Contracts**

2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

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

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

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

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

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

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

#### **C. Force Majeure**

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

## **12. Notification**

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

**A. Notices**

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

**B. Handling of Written Complaints**

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

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

**13. Captions**

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



## **Bid Package 5**

**Department of Information Resources**

**Managed Services for Telecommunications**

**Request for Offer DIR-TSO-TMP-262**

**Vendor References**

**Bid Package 5  
VENDOR REFERENCES  
Managed Services for Telecommunications  
Request for Offer DIR-TSO-TMP-262**

**REFERENCE DEADLINE TO DIR: No later than March 21, 2017 – 4:00 pm CT**

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: [managedservicestelecom@dir.texas.gov](mailto:managedservicestelecom@dir.texas.gov) At least one of the engagement customers listed in Bid Package 2, Vendor Experience, must be one of the references in the Vendor Reference Questionnaire, Bid Package 5.

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

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

**This portion to be completed by the Customer providing reference and returned to DIR at**

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

Please provide your opinion by rating the following:

**Quality of Services**

- |  |                                     |
|--|-------------------------------------|
| 1. Have you purchased any Services from this Vendor in the past 2 years?         | Yes ___ No ___                      |
| 2. Vendor's ability to provide the products or services in a timely manner?      | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 3. Vendor's knowledge of and ability to answer questions regarding the products? | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |
| 4. Vendor's ability to resolve problems?   | 0. ___ 1. ___ 2. ___ 3. ___ N/A ___ |

**Cost**

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

**Timeliness of Performance**

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

**Business Relations & Customer Satisfaction**

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

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

\_\_\_\_\_  
\_\_\_\_\_

In your opinion, should this Vendor be used again for Services?

Yes \_\_\_ No \_\_\_

In your opinion, should this Vendor be recommended to others? Yes \_\_\_ No \_\_\_

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

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

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

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

## Vendor Reference Evaluation Scoring

<p><b>Excellent (3)</b> There are no quality problems. There are no cost issues.</p>	<p>There are no delays.</p>	<p>Responses to inquiries, technical, service, and administrative issues are effective and responsive.</p>
<p><b>Satisfactory (2)</b> Nonconformances do not impact achievement of contract requirements.</p>	<p>Cost issues do not impact achievement of contract requirements.</p>	<p>Delays do not impact achievement of contract requirements.</p> <p>Response to inquiries, technical, service, and administrative issues is usually effective and responsive.</p>
<p><b>Marginally Satisfactory (1)</b> Nonconformances require minor Agency resources to ensure achievement of contract requirements.</p>	<p>Cost issues require minor Agency resources to ensure achievement of contract requirements.</p>	<p>Delays require minor Agency resources to ensure achievement of contract requirements.</p> <p>Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.</p>
<p><b>Unsatisfactory (0)</b> Nonconformances are compromising the achievement of contract requirements.</p>	<p>Cost issues are compromising performance of contract requirements.</p> <p>Delays are compromising the achievement of contract requirements.</p>	<p>Response to inquiries, technical, service, and administrative issues is not effective and responsive.</p>



**Department of Information Resources  
Managed Services for Telecommunications  
Request for Offer DIR-SDD-TMP-262**



**Bid Package 6  
Department of Information Resources**

**Managed Services for Telecommunications**

**Frequently Asked Questions**



**Department of Information Resources  
Managed Services for Telecommunications  
Request for Offer DIR-SDD-TMP-262**

**This document contains frequently asked questions to the Managed Services for Telecommunications asked in previous Managed Services RFO's. Vendors should review the answers to the questions and if the Vendor's question is not addressed below, then the Vendor may submit questions to DIR in accordance with Section 3.3 of the RFO.**

**Deadline for submitting additional questions: February 27, 2017 at 2:30 p.m. CT  
Deadline for answering questions: March 8, 2017 at 5:00 p.m. CT**

<b>General Questions</b>
--------------------------

- 1. Define the word 'manage' and the phrase 'managed services'. "Manage" is to handle, direct, govern, or control in action or use. "Managed Services" are provided by a vendor who manages and assumes responsibility for providing a defined set of services to their clients and bill an ongoing flat or near-fixed monthly fee.**
- 2. Are there any restrictions on offshore locations (i.e., location, percentages)? There are no restrictions for any DIR Contract. However, specific customers may have their own requirements.**
- 3. Once an organization has been selected for a service offering, do they then need to compete for opportunities with each agency? DIR customers are able to use DIR contracts without going out for bid for each procurement opportunity. However, customers may decide to provide a statement of work to existing vendors to obtain the most competitive pricing. Vendors are required to market their Contracts.**
- 4. Are the current incumbents eligible to submit a proposal for this project? Yes, all vendors currently holding managed services contracts are eligible to submit a proposal in response to this RFO.**
- 5. Are point to point managed data circuits included in this RFO? Can they be proposed as an option or will that be in a separate RFO? No, management of point to point data circuits is out of scope for this RFO. Point to point data circuits were included in RFO# DIR-TEX-AN-NG-001 which was released in August, 2010.**
- 6. Does a Vendor have to be an established business in the State of Texas? If not, is there a requirement and/or timeframe in which the Vendor must establish a presence within the state after contract award? Are there any certifications for Vendors outside of the state that must be completed either prior to or immediately after bid submission and/or contract award? There are no requirements for Vendors to establish a presence within the State of Texas for contract award; however, Vendors must be registered with the Comptroller of Public Accounts (CPA) as up to date on franchise tax payments in order to be awarded a contract. Vendors may contact CPA at 1-800-252-1386 or by email at tax.help@cpa.state.tx.us. Please note that specific customers or projects may have in-state requirements.**





**Department of Information Resources  
Managed Services for Telecommunications  
Request for Offer DIR-SDD-TMP-262**

7. Are managed WIFI services to agencies included in this RFO. **You may submit a response to this RFO, DIR-SDD-TMP-195, which will be evaluated and considered for possible contract award, or you may attempt to subcontract with a vendor who is awarded a prime contract through the procurement process. Managed WIFI services that are part of TEX-AN-NG will not be considered.**
8. Is there going to be a site list made available so potential vendors can better know where services are expected? **The intent of this solicitation is to award master contracts for use by DIR eligible customers. DIR does not maintain a list of DIR customer requirements.**
9. Is this the RFO to renew the DIR approved vendor list for Managed Services or a specific set of projects? **The intent of this solicitation is to award master contracts for use by DIR eligible customers. DIR does not maintain a list of DIR customer requirements.**
10. What is the approximate total number of end users statewide? **Please see response to question #9.**
11. Is there historical data for the trouble tickets available? What is the amount of trouble tickets in any given year? Is this data available? And if so, can we obtain a copy of this information? **Please see response to question #9.**
12. Is there a max number of customers one vendor can obtain? **No, there is not a maximum number of customers one vendor can obtain.**
13. Is there a successor on these contracts? If so, how will the takeover be handled if the contract is awarded to a different vendor? **There are existing managed telecommunications services contracts. Engagements procured through awarded contracts are for a specific time period. Any new engagements would be procured through a new contract and would not be transitioned to a newly awarded vendor.**
14. If there is a current vendor performing these services, will we be able to obtain a copy of the current contract? **All current contracts are listed on the DIR Web site at: <http://www.dir.texas.gov/ict/contracts/Pages/ProductsServices.aspx>. In the box "Search by Keyword," type Managed Services. The contracts will display in the search results.**
15. If our original offer only includes specific territories, once awarded can we expand the geographic area? **If Vendors provide a proposal for a specific geographic area only, they will not be able to add additional areas after contract award.**
16. If our original offer only includes specific services, once awarded can we add additional services? **Vendors may not add additional services not included in the original proposal.**



**Department of Information Resources  
Managed Services for Telecommunications  
Request for Offer DIR-SDD-TMP-262**

17. In regards to page 3, Section 2, B. Support Services d. Help/Support Desk/Services: What is the currently average monthly interaction (calls, voicemail, emails, web submit, etc.) volumes? Also, what is the current average handle time per interaction? **Please see response to Question #9.**
18. In regards to page 3, Section 2, B. Support Services d. Help/Support Desk/Services: Would DIR provide the Incident Management (ticketing) system and Knowledgebase system or would the vendor need to provide this functionality? **Any Contracts resulting from this RFO are for DIR eligible customers. Please see response to Question #9.**
19. What are the sizing and locations for the services? **Please see response to question #9.**
20. What are the configuration guidelines for this service? **Please see response to question #9.**
21. What are the legacy systems involved? Do current maintenance contracts exist? **Please see response to question #9.**
22. How does this request differ from the request in the TEX-AN contract? **Any service awarded under TEX-AN NG is out of scope for this RFO.**

**Amendment Number 1**  
**to**  
**Contract Number DIR-TSO-3987**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Affiliated Telephone, Inc.**

This Amendment Number 1 to Contract Number DIR-TSO-3987 ("Contract") is between the Department of Information Resources ("DIR") and Affiliated Telephone, Inc. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 5., DIR Cost Recovery Fee**, is hereby replaced in its entirety as follows:

**5. DIR Administrative Fee**

A. The Administrative Fee (AF) to be paid by the Vendor to DIR for telecommunications Services based on the dollar value of all sales to Customers pursuant to this Contract is zero-point five percent (0.50%) beginning September 1, 2018. The AF applied for sales prior to September 1, 2018 will be the AF paid throughout project completion, and the AF for all sales after September 1, 2018 will be 0.50%. Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the AF for sales totaling \$100,000 shall be \$500.

B. All prices quoted to Customers shall include the applicable AF. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the AF shall be incorporated into the price to the Customers on the date designated by DIR.

2. **Contract, Section 6. Notification, If Sent to the State**, is hereby replaced in entirety as follows:

If sent to the State:

Aiko Neill, CTPM, CTCM  
Director, Enterprise Contract Management  
Department of Information Resources  
300 W. 15th St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-0515  
Facsimile: (512) 475-4759  
Email: [aiko.neill@dir.texas.gov](mailto:aiko.neill@dir.texas.gov)

3. **Appendix A, Standard Terms and Conditions for Services Contracts** is hereby replaced in entirety with **Appendix A, Standard Terms and Conditions for Telecom Managed Services Contracts** dated January 23, 2018.

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



**Amendment Number 2**  
**to**  
**Contract Number DIR-TSO-3987**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Affiliated Telephone, Inc.**

This Amendment Number 2 to Contract Number DIR-TSO-3987 (“Contract”) is between the Department of Information Resources (“DIR”) and Affiliated Telephone, Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

- 1. Contract, Section 2. Term of Contract,** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for two (2) years through September 22, 2021, or until terminated pursuant to the termination clauses contained in the Contract, completing all renewal options. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

- 2. Contract, Section 6. Notification, If Sent to the Vendor,** is hereby amended as follows:

**If Sent to the Vendor**

Jim Carter, Partner  
Affiliated Telephone, Inc.  
800 Jupiter Road Suite 200  
Plano, TX 75074  
Phone: (972) 852-4010  
Email: [jcarter@affiliatedcom.com](mailto:jcarter@affiliatedcom.com)

- 3. Appendix A, Standard Terms and Conditions for Telecom Managed Services Contracts (per Amendment 1), Section 9.C. Vendor Certifications, (xvii),** is hereby amended and restated as follows:

(xvii) represent and warrant that in accordance with Section 2271.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract; and

- 4. Appendix A, Standard Terms and Conditions for Telecom Managed Services Contracts (per Amendment 1), Section 9.C. Vendor Certifications,** is hereby amended by adding the following:

(xx) represent and warrant with Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this 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.

- 5. Appendix A, Standard Terms and Conditions for Telecom Managed Services Contracts (per Amendment 1), Section 9, Vendor Responsibilities,** is hereby amended by adding the following new subsection:

**X. Cybersecurity Training**

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

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency, if Vendor, or a subcontractor, officer, or employee of Vendor, will have access to a state computer system or database, then such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Each such officer, employee, or subcontractor shall verify completion of the program to the Customer state agency.

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

**(Remainder of page intentionally left blank)**

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of last signature, but in all events, not later than September 22, 2019.

**Affiliated Telephone, Inc.**

**Authorized By:**  /signature on file/

**Name:**  Jim Carter

**Title:**  VP

**Date:**  8/29/2019 | 8:50 AM CDT

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

**Authorized By:**  /signature on file/

**Name:**  Wayne Egeler

**Title:**  CTS Director

**Date:**  9/11/2019 | 4:30 PM CDT

**Office of General Counsel:**  /initials on file/



# TEXAS

## Health and Human Services

**Dr. Courtney N. Phillips, Executive Commissioner**  
Health and Human Services Commission (HHSC)  
Procurement and Contracting Services (PCS)

Statement of Work (SOW)  
for

Managed Services for Telecommunication  
DIR Contract No. DIR-TSO-3987

Solicitation No. HHS0005916

For

*Disability Determination Services (DDS) Avaya Telephone System and Peripherals*

**Date of Release:** 08/09/19

**Responses Due:** 08/19/19

NIGP Class/Item Codes:

1. 915-76 - *\*Telephone Services Includes Installation, Moves, Changes, Adds, Programming, Removal, Training, etc. (To Include Pay Telephones)*
2. 915-79 - *\*Telecommunication Services (Not Otherwise Classified)*
3. 920-31 - *\*Installation of Computers, Peripherals, and Related Equipment (Including Software)*
4. 920-35 - *\*Modification of Existing Equipment (Including Cost of Parts)*
5. 920-37 - *\*Networking Services (Including Installation, Security, and Maintenance)*
6. 920-39 - *\*Processing System Services, Data (Not Otherwise Classified)*
7. 920-41 - *\*Retrieval Services, Information*
8. 920-45 - *\*Software Maintenance/Support*
9. 920-46 - *\*Software Updating Services*
10. 920-47 - *\*Support Services, Computer (Includes Computer Warranties)*
11. 920-48 - *\*Storage Services, Data Media*
12. 939-21 - *\*Computers, Data Processing Equipment and Accessories (Not Word Processing Equipment), Maintenance and Repair*
13. 939-72 - *\*Radio/Telecommunications/Telephone Equipment (Including Facsimile Transceivers) Maintenance and Repair*
14. 958-05 - *Asset Management Services*
15. 958-23 - *\*Computer Management Services*
16. 958-68 - *Support Services, Management*
17. 958-70 - *Outsourcing Services for Management, Operation, etc.*
18. 958-74 - *Personnel Management Services*

*\*This item may contain an Automated Information Systems (AIS)/Telecommunications component or service.*



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## 1. INTRODUCTION

The Health and Human Services Commission (“HHSC”) is seeking bids for maintenance and support of Disability Determination Services’ Avaya telephone system and peripherals at 6101 East Oltorf, Austin, Texas. The contract(s) issued as a result of this solicitation may be utilized by the Texas Health and Human Services (“HHS”) agency listed below:

- HHSC / Disability Determination Services (“DDS”)

HHSC will issue an individual purchase orders, contracts, or releases for each HHS agency, region, city, or location requiring goods/services under the contract(s). Each order will include the delivery/service location and bill to address for the HHS agency requesting goods/services. The procurement will be managed by HHSC’s Procurement and Contracting Services Division (“PCS”).

## 2. AGENCY OVERVIEW

HHSC was created in 1991 to oversee and coordinate the planning and delivery of health and human services in Texas. It is established pursuant to Chapter 531, Texas Government Code and is responsible for oversight of Texas Health and Human Services agencies (“HHS agencies”). Contracting and procurement activities for HHS agencies have been assigned to HHSC/PCS. As such, PCS will administer the initial stages of the procurement process, prior to the contract award, including solicitation announcement and publication, handling of communications from the respondent, as well as managing the receipt and evaluation of valid responses for final review and evaluation. PCS directs the execution of the award of the contract resulting from this solicitation.

## 3. DEFINITIONS

“[Appendix](#)” means additional information and/or forms that is available in the back of this solicitation document.

“[Contract Term](#)” means the period of time during which the contract will be effective from begin date to end date. The contract term may or may not be the same as the budget period.

“[Debarment](#)” means an exclusion from contracting or subcontracting with state agencies on the basis of cause set forth in Title 34, Texas Administrative Code, §20.105 et seq., and the EPLS.

“[Due Date](#)” means the established deadline for submission of a document or deliverable.

“[Respondent](#)” means an entity or individual that submits a response to a solicitation.

“[Vendor](#)” means a contractor that provides goods and services that are typically procured through the open market.

“[Vendor Identification Number \(Vendor ID No.\)](#)” means a fourteen-digit number needed for any entity to contract with the State of Texas and which must be set up with the State Comptroller’s Office. It consists of a ten-digit Vendor ID No. (*IRS number, state agency number, or social security number*) + check digit + 3 digit mail code.

“[Work Plan](#)” means a plan that describes how services will be delivered and includes specifics such as what types of services will be provided, who will be responsible for the work, timelines for completion of activities, and how services will be evaluated when complete. The work plan will be part of the contract.

#### 4. INSTRUCTIONS TO RESPONDENTS

- 4.1 Before submitting a response to this solicitation, read the ENTIRE solicitation including the Terms and Conditions:
1. Failure to read any part of this solicitation will not relieve an awarded contractor of his/her contractual obligations.
  2. Failure to comply with this section may result in disqualification of the response.
  3. Responses to this solicitation will be received until the date and time shown above.
  4. Incomplete or late responses will not be considered.
  5. Responses to this solicitation may be submitted in original hard copy to the address below, fax, or email.
  6. An authorized officer of the respondent must manually sign submittal.
- 4.2 Original hard copy responses must:
1. Be enclosed in sealed envelope(s) or sealed carton(s).
  2. Include the solicitation number, time, date of opening and title of the solicitation on the face of sealed envelope(s) or sealed carton(s).
  3. Include the respondent's name, address and telephone number on the face of all sealed envelope(s) or sealed carton(s).
- 4.3 The Physical Address for hand delivery only is:
- Texas Health and Human Services Commission  
1100 W 49<sup>th</sup> St. MC: 2020  
Austin, TX 78756
- Procurement and Contracting Services  
Building S – Bid Room  
ATTN: Response Coordinator
- 4.4 HHSC will not be responsible for failure of electronic equipment or operator error.
1. Email responses will be accepted at [PCSBids@hhsc.state.tx.us](mailto:PCSBids@hhsc.state.tx.us) only.
  2. Late, illegible, incomplete or otherwise non-responsive submissions will not be considered.
  3. Fax responses will be accepted at 512-406-2690 only. This is the only fax number that will be used for receipt of fax responses.
  4. Response must include all required information/documents for this specification, but may contain additional information considered pertinent by respondent.
  5. HHSC/PCS reserves the right to reject any or all responses.
  6. All responses become property of HHSC/ PCS.

- 4.5 Respondent must provide the following contact information for the submitted response:

\_\_\_\_\_  
Respondent Contact Person **PLEASE PRINT**  
\_\_\_\_\_  
\_\_\_\_\_  
Respondent Contact Person's Telephone Number / Fax Number / Mobile Number  
\_\_\_\_\_  
E-mail Address

## 5. DESIGNATED POINT OF CONTACT

The HHSC/ PCS sole Point of Contact for inquiries concerning this solicitation is:

Purchaser's Name:	<a href="#">Mark Cooper</a>
Telephone:	<a href="#">512-406-2442</a>
Email address:	<a href="mailto:Mark.Cooper@hhsc.state.tx.us">Mark.Cooper@hhsc.state.tx.us</a>

- 5.1 Direct all communications relating to this solicitation to the HHSC/PCS contact person named above.
- 5.2 All other communications between a respondent and HHS agency staff concerning this solicitation are prohibited.
- 5.3 In no instance is a respondent to discuss cost information contained in a response with the HHSC/ PCS Point of Contact or any other staff prior to response evaluation.
- 5.4 **Failure to comply with these requirements may result in response disqualification.**

## 6. PCS ANNOUNCEMENTS REGARDING THIS SOLICITATION

PCS will post the notice of award for solicitations exceeding \$25,000 on the Electronic State Business Daily ("ESBD").

## 7. HISTORICALLY UNDERUTILIZED BUSINESS

- 7.1 Requirements:

HHSC is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study.

HHSC encourages the use of Historically Underutilized Businesses ("HUBs") through race, ethnic and gender-neutral means. HHSC has adopted administrative rules relating to HUBs, and a Policy on the Utilization of HUBs, which is located on HHSC's website<sup>1</sup>.

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<sup>1</sup> Reference: <https://hhs.texas.gov/doing-business-hhs/contracting-hhs/historically-underutilized-business-opportunities-program>

Since the estimated value of the solicitation or resulting contract is more than \$100,000, in accordance with statute and the HUB rules, the HHSC HUB Program Office may review the solicitation or resulting contract for potential subcontracting opportunities and for the inclusion of the **HUB Subcontracting Plan**.

For this solicitation,

1. Because this solicitation is released under the jurisdiction of the DIR Cooperative Contracts Program, Respondents are not required to submit a HUB Subcontracting Plan (“HSP”) with their proposal at the time of submission:
  - a. For clarity, DIR maintains and monitors the HSPs for each cooperative/enterprise contract for the life of that contract – not the Customer utilizing the DIR Cooperative Contracts Program offerings.
  - b. All Respondents must certify in their Proposal that their DIR HSP is up-to-date and accurate.
  - c. Any Contract resulting from this SOW will incorporate the Awarded Vendor’s DIR HSP as part of that Contract.
  - d. A Vendor may not utilize any Subcontractor that is NOT listed on their HSP filed with DIR.
2. Prior to issuing a Purchase Order (“PO”) using a DIR contract, the Awarded Vendor will provide clarification regarding what Subcontractors they will/will not be using from their DIR HSP to the HHS HUB Program Office (email: [HHSCHub@hhsc.state.tx.us](mailto:HHSCHub@hhsc.state.tx.us)). A Letter of Intent can be utilized for this clarification, primarily to:
  - a. identify each Subcontractor they will be using on that PO;
  - b. confirm the dollar amount they will be paying each Subcontractor; and
  - c. state the expected percentage of the PO each Subcontractor will receive.
3. If Subcontractors are used in the delivery of the goods and/or services, the Awarded Vendor(s) is(are) required to submit monthly progress reports to HHSC’s HUB Program Office (email: [HHSCHub@hhsc.state.tx.us](mailto:HHSCHub@hhsc.state.tx.us)), whose format and content will be prescribed by HHSC’s HUB Program Office.

## 7.2 Use of Subcontractors:

Subcontractors providing services under the contract must meet the same requirements and level of experience as required of the Vendor.

1. Any subcontractor must be listed on the Vendor’s approved DIR Historically Underutilized Business (“HUB”) Subcontracting Plan (*collectively known as the “HSP”*) for their contract. DIR will work with their Vendor in the event a new subcontractor needs to be added.
2. No subcontract under the contract will relieve the Vendor of the responsibility for ensuring the requested services are provided.

3. Vendors planning to subcontract all or a portion of the work to be performed must identify the proposed subcontractors, in accordance with their DIR-published DBITS Contract Appendix B - HUB Subcontracting Plan.

## **8. SCOPE OF WORK TO BE PERFORMED**

- 8.1 Awarded Contractor shall furnish all labor, tools, transportation, equipment, materials, and supplies, as necessary.
- 8.2 Awarded Contractor shall be responsible for supervision, clean up and disposal, and must have all applicable permits, licenses, and insurance coverage.
- 8.3 Awarded Contractor shall provide parts and labor on the equipment listed below beginning on September 1, 2019 and continuing through August 30, 2021.
- 8.4 Awarded contractor must:
  1. cover PBX Core system duplicated Communication Manager (“CM”), Session Manager, System Manager, Aura Messaging Server, Avaya IQ, Gateways and Locals Survival Processors (“LSPs”), Avaya Data Switches, Music on Hold, Contact Center, Internet Protocol (“IP”) Paging, Avaya Aura Conferencing, IP Clocks and monitoring of the PBX for alarms;
  2. cover all Syn-Apps hardware and software with manufacturer support;
  3. cover VeraMark Call Accounting software loaded on a virtual server with manufacture support;
  4. provide Avaya Support Agreement;
  5. provide Avaya IQ Security Certificate;
  6. provide Avaya Support Advantage Preferred and Avaya Upgrades Advantage services;
  7. provide Technical Support for IP Phones, IP Speakers, IP Clocks, and IP Speaker systems;
  8. must assist in troubleshooting and programming UPS systems; and
  9. replace faulty or failed UPS systems to include batteries and labor.

## **9. HOURS AND DAYS SERVICES ARE TO BE PERFORMED**

Contractor will provide services as scheduled (Section 10). Normal office hours are 8:00am and 5:00pm, Monday through Friday.

## **10. DETAILED SPECIFICATIONS OF SERVICE**

### 10.1 Description of Contract:

Vendor will perform all the following tasks:

1. Monitor UPS, IQ Communications Manager, Session Manager, System Manager, Aura Messaging server, LSP, and gateways to detect any alarms or alerts.

2. Notify DDS of any outages, alerts, or alarms within four (4) hours of logged event.
3. Notify DDS of any outage of the Secure Access Link (“SAL”) within 4 hours of the outage.
4. Provide DDS with a monthly and annual outage, alert, and alarm report in an agreed upon format.
5. Provide an account representative to conduct scheduled onsite “Customer Needs” meeting to identify and resolve DDS concerns each quarter at a minimum or as requested by DDS.

#### 10.2 Hours of Service:

Standard services for DDS are Monday through Sunday, 24x7.

1. Down systems shall be dispatched within one (1) hour of call-in time.
2. Emergency service is defined at 25% of the DDS’ system out-of-service, first trunks of the “DDS” main line out-of-service, a console out-of-service, or any particulars needed covered will be dispatched within 1 hour of call-in time, 7 days by 24 hours.
3. Emergency calls (*as determined by DDS*) must be resolved within 1 business day of notification by DDS.
4. Non-emergency calls (*as determined by DDS*) must be resolved within three (3) business days of the initial notification by DDS.

#### 10.3 Quality Assurance:

Phone service must be available at least 97% of each business day on average per quarter.

#### 10.4 Covered Services:

1. Vendor will cover all costs associated with maintenance and support of DDS’ Avaya telephone system and peripherals at 6101 East Oltorf, Austin, Texas.
2. This includes costs associated with labor, support, upgrades, diagnostics, and replacements.
3. Vendor will have remote access to the system.

## 11. VENDOR REQUIREMENTS

Protecting and Reporting the Loss of Personally Identifiable Information (“PII”):

#### 11.1 PII Definitions:

The following terms are defined for the purposes of this SOLICITATION:

1. Personally Identifiable Information (“PII”): SSA and the Agency subscribes to the definition of PII provided by the Office of Management and Budget in OMB Memorandum OMB. Personally Identifiable Information means any information about an individual maintained by an agency:



- a. including, but not limited to: Education; Financial transactions; Medical history; Criminal or employment history and; information that can be used to distinguish or trace an individual's identity.
  - b. Examples of such information include: name; social security number; date and place of birth; mother's maiden name; biometric records, etc.; including any other personal information which is linked or linkable to an individual."
  - c. Other examples of PII may include: Medical records; Social Security benefit data; official State or government issued driver's license; other identification numbers; alien registration number; government passport number; employer or taxpayer identification number or; home address.
2. "Handling PII" means having access to personally identifiable information ("PII"), as defined in this specification.
  3. "Lost, compromised, or potentially compromised PII" means that, while the Contractor is in possession of PII, the PII has become physically missing or has been otherwise breached so that persons other than authorized users, and for other than an authorized purpose, have access or potential access to the PII, regardless of the form (*e.g., electronic or physical*) in which it was stored.
  4. Contractor acknowledges that any unauthorized disclosure of the information provided under this contract may violate the terms of [The SSA Privacy Act of 1974](#) and subject the Contractor to penalties.<sup>2</sup>

#### 11.2 Reporting the Loss of PII:

Vendor must contact DDS SMS Director within one (1) hour of the loss or suspected loss of PII. If the DDS SMS Director is unavailable or not immediately reachable, Vendor must contact the Director's designee within one (1) hour of the loss or suspected loss of PII.

## 12. MATERIAL SPECIFICATIONS

The respondent shall provide monitoring, support, and maintenance of DDS' Avaya Phone System, which includes the following equipment.

### 12.1 Equipment

1. Phones: Avaya IP 9670G and 9650
2. Servers: Avaya duplicated Communication Manager 6.3; Avaya Aura Messaging 6.2; Avaya System Manager 6.3; Avaya Session Manager 6.3; Avaya IQ 5.1; Avaya Local Survivable Processor 6.3; 3 Avaya G450 Gateways 6.3; Avaya Aura Conferencing 6.0; Syn-300 Syn Apps Server; Nortel Firewall Server; Nortel Multicast Server; and Dell DHCP HTTP Server.

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<sup>2</sup> Reference: [The SSA Privacy Act of 1974](#)

3. Additional Equipment: 5 HP ProDesk Work Stations; 1 HP Z230 Work Station with RAID drives; 70 Nortel 4550T-PWR Data Switches; 8 APC UPS Systems; 3 40" Displays; 2 Dell OptiPlex 3060 Work Stations; IP Speakers; PBX Core System; Music on Hold; Contact Center; Standard Paging; and IP Clocks.

## 12.2 Packages

1. Support packages: Avaya Support Advantage; Avaya Upgrades Advantage; Syn-Apps Hardware and software covered with manufacturer support; Veramark Call Accounting.
2. Technical support only for: IP Phones, IP Speakers, IP Speaker systems, and IP Clocks.
3. Vendor must assist in troubleshooting UPS Chassis hardware and battery issues.
4. Avaya IQ – Avaya Professional Services is the only authorized technical resource that is allowed to perform an upgrade to IQ. The Avaya DIR contract will be utilized for cost of services.

## 13. TERM OF CONTRACT

- 13.1 Initial Contract Term: The term of Contract is from **09/01/2019 through 08/31/2021**, with an option for HHSC or DDS to renew for an additional two (2) two-year terms, 09/01/2021 through 08/31/2023 and 09/01/2023 through 08/31/2025 sequentially.
- 13.2 The Vendor will begin work no later than ten (10) business days of receiving the purchase order and will cease work after all Deliverables described in this SOW are delivered and approved by the designated Customer Contract Manager, HHS Executive and Business Sponsors, and/or the applicable HHS Systems Directors or Managers.
- 13.3 The Awarded Vendor will cease work after all Deliverables:
  1. described in this SOW are delivered and approved by the designated Customer Contract Manager, HHS Executive and Business Sponsors, and/or the applicable HHS Systems Directors or Managers.
  2. but no later than the last day of the current term; work cannot continue beyond the contract term (*or an exercised renewal option, as may be amended*) without an active contractual agreement in place.
- 13.4 This contract does not constitute nor imply a commitment on the part of HHSC/PCS to purchase additional services from the awarded contractor in the future.
- 13.5 Emergency Option to Extend Services: The Contractor by submission of a response to this solicitation agrees that the PCS/HHSC may require continued performance, beyond the initial contract term, of any of the herein described services at the rates specified herein. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days. Such extension of services shall be subject to all specifications and terms and conditions of the contract resulting from this procurement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. The PCS/HHSC may exercise this option upon written notice to the awarded contractor.

## 14. CONTRACTOR'S RESPONSIBILITIES

- 14.1 The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the purchase order including, if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations.
- 14.2 The Contractor will be responsible for verifying that all employees will be in compliance with all requirements of the Immigration Reform and Control Act of 1986, Public Law 99-603, which became effective November 6, 1986.
- 14.3 The Contractor shall provide all labor and equipment necessary to perform/accomplish the service. All employees of the Contractor shall be a minimum of 18 years of age and experienced in the type of work to be performed.
- 14.4 The awarded contractor will be responsible for all employment taxes and other payroll withholding for their employees.
- 14.5 The Contractor shall be responsible for damage to the HHS agency's equipment, and/or the workplace and its contents by its works, its negligence in work, its personnel, or its equipment. The Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for an HHS agency.
- 14.6 The Contractor shall have local telephone service. The use of a recording/answering device, or an answering service, is not acceptable except for after normal business hours. Normal business hours are considered to be between 8:00 AM and 5:00 PM Monday through Friday, unless otherwise stated in the solicitation. An emergency 24-hour response number must be provided to allow immediate contact of the Contractor.
- 14.7 The contractor shall have available, under its direct employment and supervision, necessary organization and facilities to properly fulfill services required under the resulting contract and only personnel trained in completing the services shall be employed under and for this contract.

## 15. PERSONNEL QUALIFICATIONS

Documentation of qualifications will be provided to PCS or the HHS agency upon request.

## 16. PERSONNEL REQUIREMENTS/CONDUCT

- 16.1 The Contractor and contractor employees shall not use state or federal equipment including but not limited to (*computers, telephones, facsimiles, copiers, printers, calculators, typewriters*), except for phone use in cases of emergency and/or to respond to work requests from the HHS agency. Misuse of this equipment may result in termination of the contract.
- 16.2 Intoxicants and Illegal Drugs: The use of any kind of intoxicants or illegal drugs while on duty by the Contractor's employees may result in termination of the contract by the HHS agency. Contractor's employees shall not bring intoxicants or illegal drugs onto state property.

- 16.3 The Contractor shall provide trained qualified personnel to perform/accomplish the work in accordance with the contract documents.
- 16.4 It is understood and agreed by the HHS agency and the Contractor that the Contractor is retained as an independent contractor and in no event shall any employee hired by the Contractor be considered an employee of the state.
- 16.5 Smoking: All facilities are nonsmoking buildings. CONTRACTOR'S EMPLOYEES ARE PROHIBITED FROM SMOKING IN ALL NON- DESIGNATED AREAS.
- 16.6 Building Access: Only Contractor employees are allowed on the premises of the DDS. Contractor employees may not be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contractor employee. Contractor employees are not allowed to bring purses, bags, packages or any other kind of container into or out of the premises, except as approved by DDS for the sole purpose of carrying out duties as defined by DDS. Contractor employees attempting to leave the premises carry any of the above items or any item potentially belonging to the State will have the item searched and/or confiscated by DDS Security until proper ownership can be established.
- 16.7 Contractor employee(s) must sign in and out with the DDS security at the main entrance. Contractor employee(s) will be issued a DDS identification badge and a computer room access badge. Contractor employee(s) must wear both badges at all times while on the DDS campus (*inside or outside the building*); and be accompanied by a DDS staff member at all times when inside the building. Contractor employee(s) must return DDS' identifying badge and computer room access badge to the DDS Security at the main entrance.
- 16.8 Access to designated restricted areas is forbidden to Contractor employees. The DDS SMS Director or designee shall designate all restricted areas.

## 17. CONTRACTOR'S PERSONAL CONDUCT

- 17.1 While performing the services, contractor's and sub-contractor's personnel must comply with applicable state rules, regulations, and HHS agency's requests regarding personal and professional conduct applicable to the service locations; and otherwise conduct themselves in a businesslike and professional manner. If the HHS agency determines in good faith that a particular employee or sub-contractor's employee is not conducting himself or herself in accordance with this Section, the HHS agency may provide awarded contractor with notice and documentation concerning such conduct. Upon receipt of such notice, contractor must promptly investigate the matter and take appropriate action that may include:
1. Removing the employee from the project;
  2. Providing HHS agency with written notice of such removal; and
  3. Replacing the employee with a similarly qualified individual in a period acceptable to HHS agency.
- 17.2 Nothing in the Agreement will prevent contractor, at the request of HHS agency, from replacing any personnel who are not adequately performing their assigned responsibilities or who, in the reasonable opinion of HHS agency staff, after

- consultation with contractor, are unable to work effectively with the members of the HHS agency's staff. In such event, awarded contractor will provide replacement personnel with equal or greater skills and qualifications as soon as reasonably practicable. The parties will work together in the event of any such required replacement so as not to disrupt the overall project schedule.
- 17.3 The awarded contractor agrees that anyone employed by awarded contractor to fulfill the terms of the agreement is an employee of contractor and remains under contractor's sole direction and control.
- 17.4 The HHS agency may request the Contractor to remove any employee for cause, including but not limited to: poor or unacceptable performance of work, theft, abusive language or behavior, improper attire, in accordance with the terms and conditions of the contract. Occurrences of this type may be cause for termination of the contract.

## **18. FORMER EMPLOYEES OF A STATE AGENCY**

Respondents must comply with Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., [Texas Government Code §572.054](#) and [45 C.F.R. §74.43](#)). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two (2) years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility. As a result of such laws and regulations, a respondent must certify that it has complied with all applicable laws and regulations regarding former state employees by signing this solicitation. Furthermore, a respondent must disclose any relevant past state employment of the respondent's or its subcontractors' employees and agents.

## **19. CONTRACTOR'S PERFORMANCE**

- 19.1 All work performed under this contract shall be in accordance with this contract, local codes and ordinances and any other authority having lawful jurisdiction. It is important that the contractor performs all duties as stated. Failure to do so may result in cancellation of the contract.
- 19.2 All services and deliverables must meet or exceed the required levels of performance specified in this solicitation.
- 19.3 Contractor will perform services in a skillful manner, in accordance with best practices and high professional standards used in well-managed operations performing services similar to the services described in this solicitation.
- 19.4 The HHS agency contract administrator and/or PCS may utilize a Comptroller of Public Accounts ("CPA") Vendor Performance Form to report awarded contractor's performance to HHSC PCS staff. PCS staff may report the contractor's performance to the Texas Comptroller of Public Accounts-Vendor Performance Section.
- 19.5 Respondent warrants that deliverables developed and delivered under this agreement will meet the specifications as described in the agreement during the period following its acceptance by the HHS agency, through the term of the agreement, including any extensions and/or renewals as provided in the agreement, which is subsequently exercised by HHSC/PCS. Awarded contractor will promptly repair or replace any such deliverables not in compliance with this warranty at no charge to the HHS agency.

## 20. REMEDIES AND DISPUTES

- 20.1 Respondent agrees and understands that HHS agency may pursue tailored contractual remedies for noncompliance with the agreement. At any time and at its discretion, HHS agency may impose or pursue one or more remedies for each item of noncompliance and will determine remedies on a case-by-case basis. HHS agency's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that HHS agency may have at law or equity.
- 20.2 The HHS agency will notify respondent in writing of specific areas of awarded contractor performance that fail to meet performance expectations, standards, or schedules, but that, in the determination of HHS agency, do not result in a material deficiency or delay in the implementation or operation of the services.
- 20.3 Awarded contractor will, within three (3) business days (*or another date approved by HHS agency*) of receipt of written notice of a non-material deficiency, provide the HHS agency requestor a written response that:
1. Explains the reasons for the deficiency, awarded contractor's plan to address or cure the deficiency, and the date and time by which the deficiency will be cured; or
  2. If awarded contractor disagrees with the HHS agency's findings, its reasons for disagreeing with the findings.
- 20.4 The awarded contractor's noncompliance may result in delayed payment or non-payment as determined by HHS agency.
- 20.5 HHSC reserves the right to withhold or offset payment on all or part of any missed, incomplete, or unsatisfactory deliverables for which Customer and the Vendor have not agreed upon a remedy
- 20.6 At its discretion, the HHS agency may require contractor to submit a detailed written plan (the "Corrective Action Plan") to correct or resolve an issue, deficiency, or a breach of this Agreement.
1. A detailed explanation of the reasons for the cited deficiency;
  2. Awarded contractor's assessment or diagnosis of the cause; and
  3. A specific proposal to cure or resolve the deficiency.
- 20.7 The Corrective Action Plan must be submitted by the deadline set forth in HHS agency's request for a Corrective Action Plan. The Corrective Action Plan is subject to approval by HHS agency, which will not unreasonably be withheld.

## 21. INVOICING AND PAYMENT

- 22.1 HHSC/PCS will issue an individual purchase order for the HHS agency requiring services under the contract issued in accordance with this solicitation. Each purchase order will include the appropriate bill to address for the HHS agency requesting services.
- 22.2 Invoices submitted to the HHS agency must reflect the purchase order number as shown on the purchase order, and must specify in detail the work completed for which payment is due. Invoices are to be submitted to the address specified on the individual HHS agency purchase order.

- 22.3 Payment for services will be made by the HHS ordering agency in accordance with the contracts Pricing Schedule, as mutually agreed upon – from the awarded Contractors proposal.
- 22.4 Contractor must submit Invoices on a monthly basis or as otherwise indicated on the purchase order. Separate invoices must be submitted for each service location.
- 22.5 Failure to submit required information may result in delay of payment or return of invoice.
- 22.6 No payment will be made under the contract until and unless the HHS agency approves the services performed.
- 22.7 Prices shown on the mutually agreed-upon **Pricing Schedule** are all inclusive and no other charges are authorized. It is the responsibility of the awarded contractor to pay for any additional expenses incurred.
- 22.8 In accordance with the Awarded Vendor's DIR Contract Appendix A, Section 7.B, pricing for services provided under this solicitation are exclusive of any travel expenses that may be incurred in the performance of those services. Travel time may not be included as part of the amounts payable by Customer for any services rendered under their DIR Contract. The HHS agency will not pay any per diem, travel, hotel, equipment, phone calls, paper, reproduction services, office space, or other incidental expenses related to performing the services as advertised.
- 22.9 If the HHS agency disputes payment of all or any portion of an invoice from the awarded contractor, the HHS agency will notify the awarded contractor of such dispute and both parties will attempt in good faith to resolve the dispute. The HHS agency shall not be required to pay any disputed portion of an awarded contractor's invoice. Notwithstanding any such dispute, the awarded contractor must continue to perform the services and produce deliverables in compliance with the terms of this agreement pending resolution of such dispute so long as all undisputed amounts continue to be paid to the awarded contractor.

## **22. INSURANCE**

For the duration of any Contract resulting from this Solicitation, Respondent shall acquire insurance, bonds, or both, if applicable with financially sound and reputable independent insurers, in the type and amount customarily carried within the industry. Failure to maintain insurance coverage or acceptable alternative methods of insurance shall be deemed a breach of Contract.

## **23. MINOR INFORMALITY OR WITHDRAWAL OF RESPONSE**

Responses may be withdrawn from consideration at any time prior to the response submission deadline. A written request for withdrawal must be made to the HHSC Point of Contact. A respondent has the right to amend its response at any time and to any degree by written notice of changes or corrections in a sealed letter or carton to the Response Coordinator prior to the response submission deadline. HHSC reserves the right to waive minor informalities in a response and award a contract that is in the best interests of the State of Texas. A minor informality may include, but is not limited to, a minor irregularity or error such as a clerical error in the production of copies of the response. When HHSC determines that a response contains a minor informality, HHSC shall notify the respondent of the irregularity or error and shall provide the respondent the opportunity to correct.

**24. EVALUATION**

- 25.1 Any negative result concerning submission information or forms may cause response to be disqualified.
- 25.2 In evaluating responses to determine the best value for the State, PCS may consider information related to past contract performance/results of a Respondent including, but not limited to: CPA's [Vendor Performance Tracking System](#).
- 25.3 All responses will be evaluated in a standard manner and will be rated according to the following criteria:
1. **COST OF SERVICES SPECIFIED IN SOLICITATION**  
Costs of services are significant in the overall evaluation of the responses. However, PCS/HHSC is not obligated to select the lowest cost response. The award will be made to the vendor whose response is most advantageous to the HHS agencies, cost and other factors considered.
  2. **EXPERIENCE AND PERFORMANCE RECORD**  
PCS reserves the right to consider respondents experience with this agency or contact individuals or businesses, whether private or governmental, which might have information bearing on the performance record of respondents.
  3. **CAPABILITIES**  
Evaluation will be based upon your response to this solicitation, overall experience, and vendor's capabilities with particular emphasis on the degree of supervision and number of employees that will be provided to perform this contract.

**25. PRICING**

Respondents must propose their pricing based on the specifications in this solicitation. Respondents must indicate their pricing in their proposals Pricing Schedule. The HHS agency is not responsible for any ancillary costs and will not be responsible for any additional expenses incurred by the respondent that are not represented in the respondent's pricing.

**26. SUBMISSION REQUIREMENTS**

## 27.1 SOW Tentative Schedule of Events:

Milestone	Projected Due Date	Comments
SOW Release	08/09/19	• Solicitation released by HHSC/PCS Purchaser (Section 5).
Respondent Questions Due	08/13/19	• All inquiries must be in writing and submitted to the designated HHSC/PCS Point of Contact via email. • Written questions must be provided using the Respondent Written Questions Template (Exhibit 1).
HHSC/PCS Response to Written Questions sent to the Qualified Respondents	08/15/19	• For Respondent Written Questions instructions for this SOW, see Section 27.2 below.



Milestone	Projected Due Date	Comments
Respondent Proposals Due	08/19/19	• Follow same procedure as original written question submission above, due by 2 pm Central Time.
Anticipated Award	08/21/19	• Notice of contract award and signature processing.

## 27.2 Respondent Written Questions:

Qualified Respondents have the opportunity to submit questions prior to official submission of their Solicitation Response, following the procurement schedule above (Section 27.1).

1. The signed Respondent Written Questions / Signed Acknowledgement Addendum acknowledges the Respondent has had sufficient opportunity to ask questions and obtain information about the SOW prior to submission of the official solicitation response.
2. A Respondent Written Questions / Signed Acknowledgement Addendum signed by the Qualified Respondent is required; if the vendor has no questions, simply state “*No questions on this solicitation*” in the first available text-box.
3. Respondent Written Questions / Signed Acknowledgement Addendum must be submitted to HHSC/PCS either prior to or accompanying their response.
4. FAILURE TO ACKNOWLEDGE RECEIPT MAY RESULT IN RESPONSE REJECTION.
5. HHSC/PCS will reply to Respondent Written Questions via email.
6. HHSC/PCS will consolidate all written questions received from qualified vendors, removing redundant questions as applicable.
7. All qualified respondents will receive a copy of the consolidated questions submitted, with the agency’s responses, in the format of the addendum as provided.
8. Respondent Written Questions must be submitted using the template provided (Exhibit 1).

## 27.3 Submission Deadline to PCS:

Submit all copies of the response to the HHSC/PCS Point of Contact no later than 2:00 p.m. Central Time on the Responses Due date, as noted on this SOW’s cover page.

1. All submissions will be date and time stamped when received by HHSC/PCS.
2. The clock in the HHSC/PCS office is the official timepiece for determining compliance with the deadlines in this procurement.
3. HHSC/PCS reserves the right to reject late submissions.
4. HHSC/PCS will not accept telephone and facsimile responses.
5. It is the Respondent’s responsibility to appropriately mark and deliver the response to HHSC/PCS by the specified date.

#### 27.4 Response Format Requirements:

All documents must be in formats (hard copy and electronic) as specified by the Customer. At a minimum, all document formats (Responses and SOW Deliverables) must be in industry accepted standards (e.g., MICROSOFT (MS)/Word, MS/PowerPoint, MS/Project, Adobe Acrobat):

1. Documents must be:
  - a. typed on 8 ½" by 11" paper;
  - b. in Arial or Times New Roman Font, with Size 12 for Normal Text;
  - c. no less than Size 10 for Tables, Graphs and Appendices;
  - d. be correctly identified with the Solicitation Number and Deadline;
  - e. clearly legible and sequentially page-numbered, with the Respondent's Name at the top of each page.
2. Initial proposals may be submitted in .pdf or other Portable Document Format.
3. The proposed Project Schedule can be in Microsoft Project or Excel.
4. Any documentation requiring LEGAL REVIEW by either party will be submitted in editable MS/Word Electronic Copy, allowing "TRACK CHANGES" utilization.
5. For the Deliverables, HHSC's expectations are:
  - a. Documents not listed due in another format – MS/Word or searchable PDF;
  - b. Work Breakdown Structure and Schedules – MS/Project or MS/Excel;
  - c. Presentations – MS/PowerPoint;
  - d. Spreadsheets – MS/Excel;
  - e. Diagrams – MS/Visio..

#### 27.5 Number of Copies:

The Respondent will submit one (1) signed original and two (2) Flash Drive portable media:

1. Electronic copies must be in accessible electronic formats - compliant with Section 508 of the Rehabilitation Act and/or compliant with W3C WCAG 2.0 AA Standards for Accessibility, using either products compatible with Microsoft Office 2010 or Adobe PDF.
2. A cost section must be in its own section and easily removed from the hard copies.
3. Any disparities between the contents of the original printed response and the electronic response will be interpreted in favor of the agencies.
4. Solicitation Responses must include all mandatory content as described in this SOW for Respondents to be considered for this contract.
5. Printed originals of the response must be signed in BLUE ink by an authorized representative of the Respondent.
6. PCS will not accept telephone, facsimile or emailed responses.
7. All response materials submitted will become property of the State.

## 27.6 Mandatory Response Content:

Responses must include all specified content in order to be considered for this contract:

1. Any disparities between the contents of the original printed response and the electronic response will be interpreted in favor of the Customer.
2. Only those proposals that are deemed to be in administrative compliance will be evaluated for responsiveness to the state's needs in this SOW.
3. After bids are reviewed for compliance, an Evaluation Team will assess compliant offers through a formal evaluation process, based on established specifications in Section 25 (Evaluation).

## 27.7 Response Submissions:

Submit the following with the response. Failure by the respondent to submit the documentation listed below may disqualify the respondent from further consideration.

1. Section 1: Signed Solicitation form: the Original, signed, dated, and completed solicitation form., and all addendums (if issued).

2. Section 2: Respondent's Background and Experience

In this section detail the respondent's corporate background and experience. If the respondent proposes to use subcontractor(s), it must describe any existing or ongoing relationships with the subcontractor(s), including project descriptions. Describe the respondent's corporate background as it relates to projects similar in scope and complexity to the project described in this solicitation. This section must include information regarding the years the respondent has been in business under the same name completing the same or similar services.

3. Section 3: Capabilities:

In this section, detail the respondent's approach and ability to meet the service requirements as specified in the solicitation. Include organization chart, project management activities, number of staff, with particular emphasis on the degree of supervision and number of employees that will be provided to perform this contract. Include a description of current business activities and if the response includes the use of subcontractors, include a similar description of each subcontractor's capabilities. The respondent may add any other information that demonstrates their capability to perform under this contract.

## 27. ADDITIONAL TERMS AND CONDITIONS

HHSC may negotiate the terms and conditions of a SOW to suit their business needs so long as those terms and conditions do not conflict or weaken the DIR master contract. The DIR terms and conditions have precedence; other terms required by HHS Systems may not conflict with or weaken the DIR terms. By entering a contract with HHS Systems, the Vendor and their Subcontractors agree to HHS Systems Policies & Procedures. Contractual documents will be incorporated into the Agreement as attachments to the Signature Packet with the Awarded Vendor, as applicable; softcopies published on the HHSC [Doing Business with HHS](https://hhs.texas.gov/doing-business-hhs/contracting-hhs) | [Contracting with HHS](https://hhs.texas.gov/doing-business-hhs/contracting-hhs) webpage (<https://hhs.texas.gov/doing-business-hhs/contracting-hhs>). The Customer reserves the right to reorder and/or revise the attachments prior to a finalized (*signed*) agreement, accordingly

## 28. PROTEST PROCEDURES

[Texas Administrative Code, Title 1, Part 15, Chapter 392, Subchapter D](#)<sup>3</sup> outlines HHSC's respondent protest procedures.

## 29. CONTRACT ADMINISTRATION

Administration of the contract is a joint responsibility of the HHS agency Contract Administrator and PCS. Any proposed changes to work to be performed, whether initiated by the HHS agency or the awarded contractor, must receive final written approval in the form of a Purchase Order Change Notice signed by the authorized PCS purchasing agent. Upon issuance of purchase order, PCS will designate an individual who will serve as the Contract Manager, if necessary, and point of contact between the agency and the vendor. The Contract Manager does not have any express or implied authority to vary the terms of the purchase order, amend the purchase order in any way or waive strict performance of the terms or conditions of the purchase order. This individual's contract management and contract administration responsibilities include, but are not limited to:

1. Monitoring the vendor's progress and performance and ensuring services conform to established specification requirements.
2. Managing the financial aspects of the contract including approval of payments.
3. Meeting with the vendor as needed to review progress, discuss problems, and consider necessary action.
4. Identifying a breach of contract by assessing the difference between contract performance and non-performance.
5. Other areas as identified by the Comptroller of Public Accounts Contract Management Guide, latest edition.

## 30. AWARD

- 31.1 HHSC/PCS reserves the right to make an award on the basis of a low line item, low total (*group or groups*) or in any other combination, to the lowest respondent meeting or exceeding all advertised specifications, performance requirements, and terms and conditions, that will best serve the interests of the State.
- 31.2 HHSC/PCS shall be sole judge of "*the best interest of the State*".
- 31.3 A contract award or awards shall be made to the highest-ranked respondent(s) after PCS is satisfied that the respondent has met stipulations contained in this solicitation, and that the vendor can perform per specifications, terms and conditions.
- 31.4 HHSC/PCS may also opt not to issue an award with regard to this solicitation.
- 31.5 During the life of this contract PCS reserves the right to solicit for services that would normally be performed/accomplished using this contract if it deems that by doing so would be in the best interest of the state.

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<sup>3</sup> Reference: [Texas Administrative Code, Title 1, Part 15, Chapter 392, Subchapter D](#)

**Exhibit 1: Respondent Written Questions Template**

<b>Respondent Written Questions</b>			
<b>No.</b>	<b>Document Location</b>	<b>Respondent Question</b>	<b>HHS Answer</b>
#	<i>Reference SOW location here</i>	<i>Respondent Written Questions</i>	<i>This area for Agency to reply to Respondent Written Questions.</i>
<b>Failure to acknowledge receipt of this acknowledgement may result in response rejection. Respondents may acknowledge receipt by signing and returning this acknowledgement to PCS with the solicitation response</b>			
<b>Authorized Signature:</b>		<i>Sign Here</i>	
<b>Print/Type Name of Authorized Signature</b>		<i>Print or Type Written Signature Here</i>	
<b>Business Entity Name:</b>		<i>Respondent Name</i>	
<b>Date:</b>		<i>Date Signed</i>	

**ATTACHMENT C**  
**CONTRACT AFFIRMATIONS**

By entering into this Contract, Contractor affirms, without exception, as follows:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.
2. Contractor represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.
3. Contractor understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the 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.
4. Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
5. Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
6. Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation as well as terms and conditions advanced by Contractor that differ in any manner from HHSC's terms and conditions, if any, are rejected unless expressly accepted by HHSC in writing.
7. Contractor agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.

8. Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of HHSC.
9. Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.
10. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
11. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
12. Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
13. Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.
14. Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,*" published by the United States Department of the Treasury, Office of Foreign Assets Control.
15. Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
16. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

17. Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
18. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
19. Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
20. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
21. Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
22. Contractor agrees that upon request of HHSC, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.
23. Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to HHSC that the technology provided to HHSC for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
  - (A) providing equivalent access for effective use by both visual and non-visual means;
  - (B) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
  - (C) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.



24. If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
25. If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
26. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
27. Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.
28. If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following: (i) the nature of the previous employment with System Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time of the employment was terminated.
29. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
30. Contractor understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.

31. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and (c) neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.
32. Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.
33. Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:
  - (A) all persons employed by Contractor to perform duties within Texas; and
  - (B) all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.
34. If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.
35. Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited

to those who will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.

36. If this Contract is for consulting services,

(A). In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:

- (1) Name of individual(s) (Respondent or employee(s));
- (2) Status;
- (3) The nature of the previous employment with HHSC or the other State of Texas agency;
- (4) The date the employment was terminated and the reason for the termination; and
- (5) The annual rate of compensation for the employment at the time of its termination.

(B). If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

37. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

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38. Contractor understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act: (i) performs an abortion procedure that is not reimbursable under the state's Medicaid program; (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under

Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

- 39. Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Contractor refuses to make that certification, Contractor shall state here any facts that make it exempt from the certification:

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- 40. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.
- 41. Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
- 42. Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.
- 43. Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
- 44. Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind the Contractor.

**Authorized representative on behalf of Contractor must complete and sign the following:**

**Legal Name of Contractor:** \_\_\_\_\_

\_\_\_\_\_  
**Signature of Authorized Representative**

\_\_\_\_\_  
**Date Signed**

\_\_\_\_\_  
**Printed Name and Title of Authorized Representative**

\_\_\_\_\_  
**Phone Number**

\_\_\_\_\_  
**Federal Employer Identification Number**

\_\_\_\_\_  
**Fax Number**

\_\_\_\_\_  
**DUNS Number**

\_\_\_\_\_  
**Email Address**

\_\_\_\_\_  
**Physical Street Address**

\_\_\_\_\_  
**City, State, Zip Code**

\_\_\_\_\_  
**Mailing Address, if different**

\_\_\_\_\_  
**City, State, Zip Code**

## ATTACHMENT D



**TEXAS**  
**Health and Human Services**

**Health and Human Services Commission**  
**HHSC Uniform Terms and Conditions - Vendor**  
**Version 2.15**

Published and Effective September 1, 2017

Responsible Office: Chief Counsel

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## ARTICLE I. DEFINITIONS AND INTERPRETATIONS

### 1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, Work Orders, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference herein for all purposes if issued.

“Contractor” means the Party selected to provide the goods or services under this Contract, if any.

“Deliverable” means a work product prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code or its designee.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Parties” means the System Agency and Contractor, collectively.

“Party” means either the System Agency or Contractor, individually.

“[Project](#)” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“[Scope of Work](#)” means the description of Services and Deliverables specified in the Contract as may be amended.

“[Services](#)” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

“[Signature Document](#)” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“[Solicitation](#)” means the document issued by the System Agency under which the goods or services provided under the Contract were initially requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“[Solicitation Response](#)” means Contractor’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Attachments and addenda.

“[State Fiscal Year](#)” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“[State of Texas Textravel](#)” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“[Subcontract](#)” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“[Subcontractor](#)” means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

“[System Agency](#)” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“[Technical Guidance Letter](#)” or “[TGL](#)” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Contractor.

“[Work](#)” means all Services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including Deliverables.

“[Work Order](#)” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

## 1.2 INTERPRETIVE PROVISIONS

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

- b. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- c. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- d. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- e. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- f. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- g. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- h. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- i. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- j. Time is of the essence in this Contract.

## **ARTICLE II. CONSIDERATION**

### **2.1 PROMPT PAYMENT**

The System Agency will pay Contractor in accordance with the Prompt Payment Act, Texas Government Code, Chapter 2251.

### **2.2 EXPENSES**

Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.

When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas Textravel.

### **2.3 WORK ORDERS**

To the extent the Contract is for indefinite quantities of services, as specified in the Signature Document, all Work will be performed in accordance with Work Orders.

- a. Upon identification of a Project, the System Agency will request that Contractor submit a proposal, including pricing and a project plan, to System Agency.
- b. If Contractor is selected to carry out an individual Project, a Work Order will be issued. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and such other information or special conditions as may be necessary for the work assigned.
- c. Nothing in this Contract expresses or guarantees that the System Agency will issue Work Orders to Contractor for any of the tasks set forth in the Signature Document. All work requested under this Contract will be required on an irregular and as needed basis throughout the Contract term, and the System Agency makes no guarantee of volume or usage under this Contract.

### **ARTICLE III. STATE AND FEDERAL FUNDING**

#### **3.1 FUNDING**

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the System Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

#### **3.2 NO DEBT AGAINST THE STATE**

The Contract will not be construed as creating any debt by or on behalf of the State of Texas.

#### **3.3 DEBT TO STATE**

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Contractor acknowledges the System Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

#### **3.4 RECAPTURE OF FUNDS**

The System Agency may withhold all or part of any payments to Contractor to offset overpayments made to the Contractor. Overpayments as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor

understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs will be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

## **ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS**

### **4.1 WARRANTY**

Contractor warrants that all Work under this Contract will be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; will conform to or exceed the specifications set forth in the Contract; and will be fit for ordinary use, of good quality, and with no material defects. If Contractor fails to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Contractor, at its sole expense, to:

- a. Repair or replace all defective or damaged Work;
- b. Refund any payment received for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and
- c. Take necessary action to ensure that future performance and Work conform to the Contract requirements.

### **4.2 GENERAL AFFIRMATIONS**

Contractor further certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

### **4.3 FEDERAL ASSURANCES**

Contractor further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

### **4.4 FEDERAL CERTIFICATIONS**

Contractor further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein. **In addition, Contractor certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

## **ARTICLE V. OWNERSHIP AND INTELLECTUAL PROPERTY**

### **5.1 OWNERSHIP**

The System Agency will own, and Contractor hereby assigns to the System Agency, all right, title, and interest in all Work.

### **5.2 INTELLECTUAL PROPERTY**

- a. To the extent any Work results in the creation of Intellectual Property, all right, title, and interest in and to such Intellectual Property will vest in the System Agency upon creation and will be deemed to be a “work made for hire” and made in the course of the services rendered pursuant to this Contract.
- b. To the extent that title to any such Intellectual Property may not by law vest in the System Agency, or such Intellectual Property may not be considered a “work made for hire,” all rights, title, and interest therein are hereby irrevocably assigned to the System Agency. The System Agency will have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.
- c. Contractor must give the System Agency and the State of Texas, as well as any person designated by the System Agency or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond the stated amount payable to Contractor for the services authorized under this Contract.

## **ARTICLE VI. RECORDS, AUDIT, AND DISCLOSURE**

### **6.1 BOOKS AND RECORDS**

Contractor will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor’s Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Contractor will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

### **6.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS**

In addition to any right of access arising by operation of law, Contractor and any of Contractor’s affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States,

the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

### **6.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS**

- a. Contractor must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction will be at Contractor or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance will be solely the decision of the System Agency.
- b. As part of the Services, Contractor must provide to HHSC upon request a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

### **6.4 SAO AUDIT**

Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

### **6.5 CONFIDENTIALITY**

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Contractor agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Contractor. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

## 6.6 PUBLIC INFORMATION ACT

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Contractor must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

## ARTICLE VII. CONTRACT MANAGEMENT AND EARLY TERMINATION

### 7.1 CONTRACT MANAGEMENT

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- a. Suspending all or part of the Contract;
- b. Requiring the Contractor to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Contractor found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of Work;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

### 7.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination.

### 7.3 TERMINATION FOR CAUSE

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

#### a. **Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

#### b. **Failure to Maintain Financial Viability**

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Contractor no longer maintains the financial



viability required to complete the Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

#### **7.4 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS.**

If the System Agency terminates the Contract for Cause, the Contractor will be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Contractor. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation that is reasonably attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

#### **7.5 EQUITABLE SETTLEMENT**

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

### **ARTICLE VIII. MISCELLANEOUS PROVISIONS**

#### **8.1 AMENDMENT**

The Contract may only be amended by an Amendment executed by both Parties.

#### **8.2 INSURANCE**

Unless otherwise specified in this Contract, Contractor will acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Contractor will provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor will secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.

These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

#### **8.3 DELEGATION OF AUTHORITY**

Whenever, by any provision of the Contract, any right, power or duty is imposed or conferred on HHSC, the right power or duty so imposed or conferred is possessed and exercised by the System Agencies Executive Commissioner unless such is delegated to duly appointed agents or employees. The Executive Commissioner of the System Agency will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by the System Agency is

limited to the terms of the Contract. Contractor may not reply upon implied authority and is not delegated authority under the Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of System Agency program; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding the System Agency programs or the Contract. However, upon request and reasonable notice to the Contractor, Contract will assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

#### **8.4 LEGAL OBLIGATIONS**

Contractor will comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Contractor will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

#### **8.5 E-VERIFY**

By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of:

- a. All persons employed during the contract term to perform duties within Texas; and
- b. All persons (including subcontractors) assigned by the contractor to perform Work pursuant to the Contract.

#### **8.6 PERMITTING AND LICENSURE**

At Contractor's sole expense, Contractor will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract. Contractor will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

#### **8.7 INDEMNITY**

**TO THE EXTENT ALLOWED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND**

**LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:**

- **CONTRACTOR'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- **ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY CONTRACTOR, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- **EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS; OR**
- **WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

**CONTRACTOR WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.**

## **8.8 ASSIGNMENTS**

Contractor may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Contractor from its obligations under the Contract.

Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

## **8.9 SUBCONTRACTS**

Contractor will be responsible to the System Agency for any Subcontractor's performance under this Contract. Nothing in this Contract will be construed to relieve Contractor of the responsibility for ensuring that the goods delivered or services rendered by Contractor or any of its Subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to the System Agency of any Subcontractor receiving compensation of One hundred thousand dollars (\$100,000.00) or more of the Work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to perform Services. The System Agency reserves the right to:

- a. Reject the Subcontract or require changes to any provisions that do not comply with the requirements, duties, or responsibilities of the Contract or that create significant barriers for the System Agency to monitor compliance with the Contract;
- b. Object to the selection of the Subcontractor; or
- c. Object to the subcontracting of the Work proposed to be Subcontracted.

#### **8.10 HUB/MENTOR PROTÉGÉ**

In accordance with State law, it is the System Agency's policy to assist HUBs whenever possible in providing goods and services to the System Agency. The System Agency encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling their obligations with the System Agency. In addition to information required by this Contract, the contracting Party will provide the procurement department of the System Agency with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder.

The System Agency encourages the Parties it contracts with to partner with certified HUBs that participate in the Texas Comptroller of Public Accounts' Mentor Protégé Program.

#### **8.11 RELATIONSHIP OF THE PARTIES**

Contractor is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the System Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other Party.

Contractor will be solely responsible for, and the System Agency will have no obligation with respect to:

- a. Payment of Contractor's employees for all Services performed;
- b. Ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.

## **8.12 TECHNICAL GUIDANCE LETTERS**

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency will be incorporated into the Contract by reference herein for all purposes when it is issued.

## **8.13 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the System Agency. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

## **8.14 SEVERABILITY**

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

## **8.15 SURVIVABILITY**

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

## **8.16 FORCE MAJEURE**

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

### **8.17 DISPUTE RESOLUTION**

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

### **8.18.2017 NO WAIVER OF PROVISIONS**

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

### **8.19 PUBLICITY**

Except as provided in the paragraph below, Contractor must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

### **8.20 PROHIBITION ON NON-COMPETE RESTRICTIONS**

Contractor will not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

### **8.21 NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency.

### **8.22 ENTIRE CONTRACT AND MODIFICATION**

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the System Agency.

### 8.23 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

### 8.24 PROPER AUTHORITY

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor with respect to compensation.

### 8.25 CIVIL RIGHTS

- a. Contractor agrees to comply with state and federal anti-discrimination laws, including:
  - (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  - (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - (3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  - (4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
  - (5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  - (6) Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
  - (7) The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

Contractor agrees to comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor agrees to take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- c. Contractor agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for

the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- d. Contractor agrees to comply with Executive Orders 13279 and 13559, and their implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Contractor must provide written notice to beneficiaries of their rights.
- e. Upon request, Contractor will provide HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- f. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

HHSC Civil Rights Office  
701 W. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
TTY Toll Free: (877) 432-7232  
Fax: (512) 438-5885.

#### **8.26 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Contractor agrees that it will conform to HHSC standards for data management as described by the policies of the HHSC Office of the Chief Data Officer (OCDO). These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by the HHSC for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

#### **8.27 NOTICE OF LEGAL MATTER OR LITIGATION**

Contractor shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

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## **ATTACHMENT E HHSC SPECIAL CONDITIONS**

### **HHSC SPECIAL CONDITIONS**

The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions-Vendor (Version 2.14)

#### **Article I. SPECIAL DEFINITIONS**

**“Conflict of Interest”** means a set of facts or circumstances, a relationship, or other situation under which Contractor, a Subcontractor, or individual has past, present, or currently planned personal or financial activities or interests that either directly or indirectly: (1) impairs or diminishes the Contractor’s, or Subcontractor’s ability to render impartial or objective assistance or advice to the HHSC; or (2) provides the Contractor or Subcontractor an unfair competitive advantage in future HHSC procurements.

**“Contractor Agents”** means Contractor’s representatives, employees, officers, Subcontractors, as well as their employees, contractors, officers, and agents.

**“Custom Software”** means Software developed as a Deliverable or in connection with the Agreement.

**“Data Use Agreement”** means the agreement incorporated into the Contract to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information.

**“Federal Financial Participation”** is a program that allows states to receive partial reimbursement for activities that meet certain objectives of the federal government. It is also commonly referred to as the Federal Medical Assistance Percentage (FMAP).

**“Item of Noncompliance”** means Contractor’s acts or omissions that: (1) violate a provision of the Contract; (2) fail to ensure adequate performance of the Work; (3) represent a failure of Contractor to be responsive to a request of HHSC relating to the Work under the Contract.

**“Minor Administrative Change”** refers to a change to the Contract that does not increase the fees or term and done in accordance with Section 5.02 of these Special Conditions.

**“Confidential System Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor; or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHSC or through performance of the Work, which is not designated as Confidential Information in a Data Use Agreement.

**“State”** means the State of Texas and, unless otherwise indicated or appropriate, will be interpreted to mean HHSC and other agencies of the State of Texas that may participate in the administration of HHSC Programs; provided, however, that no provision will be interpreted to include any entity other than HHSC as the contracting agency.

**“Software”** means all operating system and applications software used or created by Contractor to perform the Work under the Contract.

**“Third Party Software”** refers to software programs or plug-ins developed by companies or individuals other than Contractor which are used in performance of the Work. It does not include items which are ancillary to the performance of the Work, such as internal systems of Contractor which were deployed by Contractor prior to the Contract and not procured to perform the Work.

**“Turnover”** means the effort necessary to enable HHSC, or its designee, to effectively close out the Contract and move the Work to another vendor or to perform the Work by itself.

**“Turnover Plan”** means the written plan developed by Contractor, approved by HHSC, and to be employed when the Work described in the Contract transfers to HHSC, or its designee, from the Contractor.

**“UTC”** means HHSC’s Uniform Terms and Conditions- Vendor –Version 2.15

## **Article II. GENERAL PROVISIONS**

### **2.01 Other System Agencies Participation in the Contract**

In addition to providing the Work specified for HHSC, Contractor agrees to allow other System Agencies the option to participate in the Contract under the same terms and conditions. Each System Agency that elects to obtain Work under this section will issue a purchase or Work order to Contractor, referring to, and incorporating by reference, the terms and conditions specified in the Contract.

System Agencies have no authority to modify the terms of the Contract. However, additional System Agency terms and conditions that do not conflict with the Contract, and are acceptable to the Contractor, may be added in a purchase or Work order and given effect. No additional term or condition added in a purchase or Work order issued by a System Agency can conflict with or diminish a term or condition of the Contract. In the event of a conflict between a System Agency’s purchase or Work order and the Contract, the Contract terms control.

### **2.02 Cooperation with HHSC Vendors**

At HHSC’s request, Contractor will allow parties interested in responding to other HHSC solicitations to have reasonable access during normal business hours to the Work, software, systems documentation, and site visits to the Contractor’s facilities. Contractor may elect to have such parties inspecting the Work, facilities, software or systems documentation to agree to use the information so obtained only in the State of Texas and only for the purpose of responding to the relevant HHSC solicitation.

### **2.03 Renegotiation and Reprocurement Rights**

Notwithstanding anything in the Contract to the contrary, HHSC may at any time during the term of the Contract exercise the option to notify Contractor that HHSC has elected to renegotiate certain terms of the Contract. Upon Contractor’s receipt of any notice under this section, Contractor and HHSC will undertake good faith negotiations of the subject terms of the Contract.

HHSC may at any time issue solicitation instruments to other potential contractors for performance of any portion of the Work covered by the Contract, including services similar or comparable to the Work, performed by Contractor under the Contract. If HHSC elects to procure the Work, or any portion thereof, from another vendor in accordance with this section, HHSC will have the termination rights set forth in the UTC.

### **Article III. CONTRACTORS PERSONNEL AND SUBCONTRACTORS**

#### **3.01 Qualifications**

Contractor agrees to maintain the organizational and administrative capacity and capabilities proposed in its response to the Solicitation, as modified, to carry out all duties and responsibilities under the Contract. Contractor Agents assigned to perform the duties and responsibilities under the Contract must be and remain properly trained and qualified for the functions they are to perform. Notwithstanding the transfer or turnover of personnel, Contractor remains obligated to perform all duties and responsibilities under the Contract without degradation and in strict accordance with the terms of the Contract.

#### **3.02 Conduct and Removal**

While performing the Work under the Contract, Contractor Agents must comply with applicable Contract terms, State and federal rules, regulations, HHSC's policies, and HHSC's requests regarding personal and professional conduct; and otherwise conduct themselves in a businesslike and professional manner. If HHSC determines in good faith that a particular Contractor Agent is not conducting himself or herself in accordance with the terms of the Contract, HHSC may provide Contractor with notice and documentation regarding its concerns. Upon receipt of such notice, Contractor must promptly investigate the matter and, at HHSC's election, take appropriate action that may include removing the Contractor Agent from performing any Work under the Contract and replacing the Contractor Agent with a similarly qualified individual acceptable to HHSC as soon as reasonably practicable or as otherwise agreed to by HHSC.

### **Article IV. PERFORMANCE**

#### **4.01 Measurement**

Satisfactory performance of the Contract, unless otherwise specified in the Contract, will be measured by:

- (a) Compliance with Contract requirements, including all representations and warranties;
- (b) Compliance with the Work requested in the Solicitation and Work proposed by Contractor in its response to the Solicitation and approved by HHSC;
- (c) Delivery of Work in accordance with the service levels proposed by Contractor in the Solicitation Response as accepted by HHSC;
- (d) Results of audits, inspections, or quality checks performed by the HHSC or its designee;
- (e) Timeliness, completeness, and accuracy of Work; and
- (f) Achievement of specific performance measures and incentives as applicable.

## **Article V. AMENDMENTS AND MODIFICATIONS**

### **5.01 Formal Procedure**

No different or additional Work or contractual obligations will be authorized or performed unless contemplated within the Scope of Work and memorialized in an amendment or modification of the Contract that is executed in compliance with this Article. No waiver of any term, covenant, or condition of the Contract will be valid unless executed in compliance with this Article. Contractor will not be entitled to payment for Work that is not authorized by a properly executed Contract amendment or modification, or through the express written authorization of HHSC.

Any changes to the Contract that results in a change to either the term, fees, or significantly impacting the obligations of the parties to the Contract must be effectuated by a formal Amendment to the Contract. Such Amendment must be signed by the appropriate and duly authorized representative of each party in order to have any effect.

### **5.02 Minor Administrative Changes**

HHSC's designee, referred to as the Contract Manager, Project Sponsor, or other equivalent, in the Contract, is authorized to provide written approval of mutually agreed upon Minor Administrative Changes to the Work or the Contract that do not increase the fees or term. Changes that increase the fees or term must be accomplished through the formal amendment procedure, as set forth in Section 5.01 of these Special Conditions. Upon approval of a Minor Administrative Change, HHSC and Contractor will maintain written notice that the change has been accepted in their Contract files.

## **Article VI. PAYMENT**

### **6.01 Enhanced Payment Procedures**

HHSC will be relieved of its obligation to make any payments to Contractor until such time as any and all set-off amounts have been credited to HHSC. If HHSC disputes payment of all or any portion of an invoice from Contractor, HHSC will notify the Contractor of the dispute and both Parties will attempt in good faith to resolve the dispute in accordance with these Special Conditions. HHSC will not be required to pay any disputed portion of a Contractor invoice unless, and until, the dispute is resolved. Notwithstanding any such dispute, Contractor will continue to perform the Work in compliance with the terms of the Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to Contractor.

## **Article VII. CONFIDENTIALITY**

### **7.01 Consultant Disclosure**

Contractor agrees that any consultant reports received by HHSC in connection with the Contract may be distributed by HHSC, in its discretion, to any other state agency and the Texas legislature. Any distribution may include posting on HHSC's website or the website of a standing committee of the Texas Legislature.

## **7.02 Confidential System Information**

HHSC prohibits the unauthorized disclosure of Other Confidential Information. Contractor and all Contractor Agents will not disclose or use any Other Confidential Information in any manner except as is necessary for the Work or the proper discharge of obligations and securing of rights under the Contract. Contractor will have a system in effect to protect Other Confidential Information. Any disclosure or transfer of Other Confidential Information by Contractor, including information requested to do so by HHSC, will be in accordance with the Contract. If Contractor receives a request for Other Confidential Information, Contractor will immediately notify HHSC of the request, and will make reasonable efforts to protect the Other Confidential Information from disclosure until further instructed by the HHSC.

Contractor will notify HHSC promptly of any unauthorized possession, use, knowledge, or attempt thereof, of any Other Confidential Information by any person or entity that may become known to Contractor. Contractor will furnish to HHSC all known details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist HHSC in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Other Confidential Information.

HHSC will have the right to recover from Contractor all damages and liabilities caused by or arising from Contractor or Contractor Agents' failure to protect HHSC's Confidential Information as required by this section.

**IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COSTS) CAUSED BY OR ARISING FROM CONTRACTOR OR CONTRACTOR AGENTS FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION. Contractor WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.**

## **Article VIII. DISPUTES AND REMEDIES**

### **8.01 Agreement of the Parties**

The Parties agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under the Contract before resorting to formal dispute resolution processes otherwise provided in the Contract. The Parties will use all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in the Contract, unless HHSC immediately terminates the Contract in accordance with the terms and conditions of the Contract.

Any dispute, that in the judgment of any Party to the Agreement, may materially affect the performance of any Party will be reduced to writing and delivered to the other Party within 10 business days after the dispute arises. The Parties must then negotiate in good faith and use every

reasonable effort to resolve the dispute at the managerial or executive levels prior to initiating formal proceedings pursuant to the UTC and Texas Government Code § 2260, unless a Party has reasonably determined that a negotiated resolution is not possible and has so notified the other Party. The resolution of any dispute disposed of by agreement between the Parties will be reduced to writing and delivered to all Parties within 10 business days of such resolution.

## **8.02 Operational Remedies**

The remedies described in this section may be used or pursued by HHSC in the context of the routine operation of the Contract and are directed to Contractor's timely and responsive performance of the Work as well as the creation of a flexible and responsive relationship between the Parties. Contractor agrees that HHSC may pursue operational remedies for Items of Noncompliance with the Contract. At any time, and at its sole discretion, HHSC may impose or pursue one or more said remedies for each Item of Noncompliance. HHSC will determine operational remedies on a case-by-case basis which include, but are not, limited to:

- (a) Requesting a detailed Corrective Action Plan, subject to HHSC approval, to correct and resolve a deficiency or breach of the Contract;
- (b) Require additional or different corrective action(s) of HHSC's choice;
- (c) Suspension of all or part of the Contract or Work;
- (d) Prohibit Contractor from incurring additional obligations under the Contract;
- (e) Issue Notice to stop Work Orders;
- (f) Assessment of liquidated damages as provided in the Contract;
- (g) Accelerated or additional monitoring;
- (h) Withholding of payments; and
- (i) Additional and more detailed programmatic and financial reporting.

HHSC's pursuit or non-pursuit of an operational remedy does not constitute a waiver of any other remedy that HHSC may have at law or equity; excuse Contractor's prior substandard performance, relieve Contractor of its duty to comply with performance standards, or prohibit HHSC from assessing additional operational remedies or pursuing other appropriate remedies for continued substandard performance.

HHSC will provide notice to Contractor of the imposition of an operational remedy in accordance with this section, with the exception of accelerated monitoring, which may be unannounced. HHSC may require Contractor to file a written response as part of the operational remedy approach.

## **8.03 Equitable Remedies**

Contractor acknowledges that if, Contractor breaches, attempts, or threatens to breach, any obligation under the Contract, the State will be irreparably harmed. In such a circumstance, the State may proceed directly to court notwithstanding any other provision of the Contract. If a court of competent jurisdiction finds that Contractor breached, attempted, or threatened to breach any such obligations, Contractor will not oppose the entry of an order compelling performance by Contractor and restraining it from any further breaches, attempts, or threats of breach without a further finding of irreparable injury or other conditions to injunctive relief.

#### **8.04 Continuing Duty to Perform**

Neither the occurrence of an event constituting an alleged breach of contract, the pending status of any claim for breach of contract, nor the application of an operational remedy, is grounds for the suspension of performance, in whole or in part, by Contractor of the Work or any duty or obligation with respect to the Contract.

### **Article IX. DAMAGES**

#### **9.01 Availability and Assessment**

HHSC will be entitled to actual, direct, indirect, incidental, special, and consequential damages resulting from Contractor's failure to comply with any of the terms of the Contract. In some cases, the actual damage to HHSC as a result of Contractor's failure to meet the responsibilities or performance standards of the Contract are difficult or impossible to determine with precise accuracy. Therefore, if provided in the Contract, liquidated damages may be assessed against Contractor for failure to meet any aspect of the Work or responsibilities of the Contractor. HHSC may elect to collect liquidated damages:

- (a) Through direct assessment and demand for payment to Contractor; or
- (b) By deducting the amounts assessed as liquidated damages against payments owed to Contractor for Work performed. In its sole discretion, HHSC may deduct amounts assessed as liquidated damages as a single lump sum payment or as multiple payments until the full amount payable by the Contractor is received by the HHSC.

#### **9.02 Specific Items of Liability**

Contractor bears all risk of loss or damage due to defects in the Work, unfitness or obsolescence of the Work, or the negligence or intentional misconduct of Contractor or Contractor Agents. Contractor will ship all equipment and Software purchased and Third Party Software licensed under the Contract, freight prepaid, FOB HHSC's destination. The method of shipment will be consistent with the nature of the items shipped and applicable hazards of transportation to such items. Regardless of FOB point, Contractor bears all risks of loss, damage, or destruction of the Work, in whole or in part, under the Contract that occurs prior to acceptance by HHSC. After acceptance by HHSC, the risk of loss or damage will be borne by HHSC; however, Contractor remains liable for loss or damage attributable to Contractor's fault or negligence.

Contractor will protect HHSC's real and personal property from damage arising from Contractor or Contractor Agents performance of the Contract, and Contractor will be responsible for any loss, destruction, or damage to HHSC's property that results from or is caused by Contractor or Contractor Agents' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of HHSC, Contractor will notify HHSC thereof and, subject to direction from HHSC or its designee, will take all reasonable steps to protect that property from further damage. Contractor agrees, and will require Contractor Agents, to observe safety measures and proper operating procedures at HHSC sites at all times. Contractor will immediately report to the HHSC any special defect or an unsafe condition it encounters or otherwise learns about.

**IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, CONTRACTOR WILL BE SOLELY RESPONSIBLE FOR ALL COSTS INCURRED THAT ARE ASSOCIATED WITH INDEMNIFYING THE STATE OF TEXAS OR HHSC WITH RESPECT TO INTELLECTUAL, REAL AND PERSONAL PROPERTY. ADDITIONALLY, HHSC RESERVES THE RIGHT TO APPROVE COUNSEL SELECTED BY CONTRACTOR TO DEFEND HHSC OR THE STATE OF TEXAS AS REQUIRED UNDER THIS SECTION.**

## **Article X. TURNOVER**

### **10.01 Turnover Plan**

HHSC may require Contractor to develop a Turnover Plan at any time during the term of the Contract in HHSC's sole discretion. Contractor must submit the Turnover Plan to HHSC for review and approval. The Turnover Plan must describe Contractor's policies and procedures that will ensure:

- (a) The least disruption in the delivery of the Work during Turnover to HHSC or its designee; and
- (b) Full cooperation with HHSC or its designee in transferring the Work and the obligations of the Contract.

### **10.02 Turnover Assistance**

Contractor will provide any assistance and actions reasonably necessary to enable HHSC or its designee to effectively close out the Contract and transfer the Work and the obligations of the Contract to another vendor or to perform the Work by itself. Contractor agrees that this obligation survives the termination, regardless of whether for cause or convenience, or the expiration of the Contract and remains in effect until completed to the satisfaction of HHSC.

## **Article XI. ADDITIONAL LICENSE AND OWNERSHIP PROVISIONS**

### **11.01 HHSC Additional Rights**

HHSC will have ownership and unlimited rights to use, disclose, duplicate, or publish all information and data developed, derived, documented, or furnished by Contractor under or resulting from the Contract. Such data will include all results, technical information, and materials developed for or obtained by HHSC from Contractor in the performance of the Work. If applicable, Contractor will reproduce and include HHSC's copyright, proprietary notice, or any product identifications provided by Contractor.

### **11.02 Third Party Software**

Contractor grants HHSC a non-exclusive, perpetual, license for HHSC to use Third Party Software and its associated documentation for its internal business purposes. HHSC will be entitled to use Third Party Software on the equipment or any replacement equipment used by HHSC, and with any replacement Third Party Software chosen by HHSC, without additional expense.



Terms in any licenses for Third Party Software will be consistent with the requirements of this section. Prior to utilizing any Third Party Software product not identified in the Solicitation Response, Contractor will provide HHSC copies of the license agreement from the licensor of the Third Party Software to allow HHSC to, in its discretion, object to the license agreement that must, at a minimum, provide HHSC with necessary rights consistent with the short and long-term goals of the Contract. Contractor will assign to HHSC all licenses for the Third Party Software as necessary to carry out the intent of this section.

Contractor will, during the Contract, maintain any and all Third Party Software at their most current version or no more than one version back from the most current version. However, Contractor will not maintain any Third Party Software versions, including one version back, if notified by HHSC that any such version would prevent HHSC from using any functions, in whole or in part, of HHSC systems or would cause deficiencies in HHSC systems.

### **11.03 Software and Ownership Rights**

In accordance with 45 C.F.R. Part 95.617, all appropriate federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for government purposes all Work, materials, Custom Software and modifications thereof, source code, associated documentation designed, developed, or installed with Federal Financial Participation under the Contract, including but not limited to those materials covered by copyright.

## **Article XII. UNIFORM ICT ACCESSIBILITY CLAUSE**

### **12.01 Applicability**

This Section applies to the procurement or development of Information and Communication Technology (ICT) for HHSC, or any changes to HHSC's ICT. This Section also applies if the Contract requires Contractor to perform a service or supply a goods that include ICT that: (i) HHSC employees are required or permitted to access; or (ii) members of the public are required or permitted to access. This Section does not apply to incidental uses of ICT in the performance of a contract, unless the parties agree that the ICT will become property of the state or will be used by HHSC's Client/Recipient after completion of the Contract.

Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a product / service.

### **12.02 Definitions**

The legacy term "Electronic and Information Resources" (EIR) and the term "Information and Communication Technology" (ICT) are considered equivalent in meaning for the purpose of applicability of HHSC Uniform Terms and Conditions, policies, accessibility checklists, style guides, contract specifications, and other contract management documents.

To the extent that any other of the following definitions conflict with definitions elsewhere in this Contract, the following definitions are applicable to this Section only.

1. **“Accessibility Standards”** refers to the Information and Communication Technology Accessibility Standards and the Web Accessibility Standards/Specifications under the Web Content Accessibility Guidelines version 2.0 Level AA, (WCAG 2.0).
2. **“Information and Communication Technology (ICT)”** is any information technology, equipment, or interconnected system or subsystem of equipment for which the principal function is the creation, conversion, duplication, automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, reception, or broadcast of data or information. Examples of ICT are electronic content, telecommunications products, computers and ancillary equipment, software, information kiosks and transaction machines, videos, IT services, and multifunction office machines which copy, scan, and fax documents.
3. **“Information and Communication Technology Accessibility Standards”** refers to the accessibility standards for information and communication technology contained in the Web Content Accessibility Guidelines version 2.0 Level AA.
4. **“Web Accessibility Standards/Specifications”** refers to the web standards contained in WCAG 2.0 Level AA.
5. **“Products”** means information resources technologies that are, or are related to, ICT.
6. **“Service”** means the act of delivering information or performing a task for employees, clients, or members of the public through a method of access or delivery that uses ICT.

### **12.03 Accessibility Requirements**

Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, HHSC must procure Products or Services that comply with the Accessibility Standards when such Products or Services are available in the commercial marketplace or when such Products or Services are developed in response to a procurement solicitation. Accordingly, Contractor must provide ICT and associated Product and/or Service documentation and technical support that comply with the Accessibility Standards.

### **12.04 Evaluation, Testing and Monitoring**

1. HHSC may review, test, evaluate and monitor Contractor’s Products, Services and associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.

2. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or Service, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the Contractor's assertion of compliance with the Accessibility Standards.
3. Contractor agrees to cooperate fully and provide HHSC and its representatives timely access to Products, Services, documentation, and other items and information needed to conduct such review, evaluation, testing and monitoring.

**12.05 Representations and Warranties**

1. Contractor represents and warrants that: (i) as of the effective date of the contract, the Products, Services and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or an HHS agency's client or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless HHSC and/or Client/Recipient, as applicable uses the Products in a manner that renders it noncompliant.
2. In the event Contractor should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, Contractor represents and warrants that it will, in a timely manner and at no cost to HHSC, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, repair, replacement, and upgrading of the Product, or providing a suitable substitute.
3. Contractor acknowledges and agrees that these representations and warranties are essential inducements on which HHSC relies in awarding this contract.
4. Contractor's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.

**12.06 Remedies**

1. Pursuant to Texas Government Code Sec. 2054.465, neither Contractor nor any other person has cause of action against HHSC for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
2. In the event of a breach of Contractor's representations and warranties, Contractor will be liable for direct and consequential damages and any other remedies to which HHSC may be entitled. This remedy is cumulative of any and all other remedies to which HHSC may be entitled under this contract and other applicable law.

### **Article XIII. MISCELLANEOUS PROVISIONS**

#### **13.01 Conflicts of Interest**

Contractor warrants to the best of its knowledge and belief, except to the extent already disclosed to HHSC, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Contractor or Contractor Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their performance under the Contract. Contractor will, and require Contractor Agents, to establish safeguards to prohibit Contract Agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational Conflict of Interest, or for personal gain. Contractor and Contractor Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with respect to the activities conducted under the Contract.

Contractor agrees that, if after Contractor's execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

If HHSC determines that Contractor was aware of a Conflict of Interest and did not disclose the conflict to HHSC, such nondisclosure will be considered a material breach of the Contract. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or federal law enforcement officials for further action.

#### **13.02 Flow Down Provisions**

Contractor must include any applicable provisions of the Contract in all subcontracts based on the scope and magnitude of Work to be performed by such Subcontractor. Any necessary terms will be modified appropriately to preserve the State's rights under the Contract.

#### **13.03 Manufacturer's Warranties**

Contractor assigns to HHSC all of the manufacturers' warranties and indemnities relating to the Work, including without limitation, Third Party Software, to the extent Contractor is permitted by the manufacturers to make such assignments to HHSC.

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## ATTACHMENT F

### DATA USE AGREEMENT BETWEEN THE TEXAS HEALTH AND HUMAN SERVICES SYSTEM AND CONTRACTOR

This Data Use Agreement (“DUA”) is effective as of the date of the Base Contract into which it is incorporated (“Effective Date”), by and between the Texas Health and Human Services System, which includes the Texas Health and Human Services Commission and the Department of State Health Services (“HHS”) and Contractor (the “Base Contract”).

#### ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate access to, creation, receipt, maintenance, use, disclosure or transmission of Confidential Information with Contractor, and describe Contractor’s rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. This DUA also describes HHS’s remedies in the event of Contractor’s noncompliance with its obligations under this DUA. This DUA applies to both HHS business associates, as “business associate” is defined in the Health Insurance Portability and Accountability Act (HIPAA), and contractors who are not business associates, who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract. As a best practice, HHS requires its contractors to comply with the terms of this DUA to safeguard all types of Confidential Information.

As of the Effective Date of this DUA, if any provision of the Base Contract conflicts with this DUA, this DUA controls.

#### ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the following meanings:

“Authorized Purpose” means the specific purpose or purposes described in the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“Authorized User” means a person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom Contractor warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

“Breach” means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure or loss of Confidential Information other than as permitted by this DUA shall be presumed to be a Breach

unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.

**“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99
- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (PII) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (PHI) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (SPI) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

**“Destroy”, “Destruction”,** for Confidential Information, means:

(1) Paper, film, or other hard copy media have been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.

(2) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, "Guidelines for Media Sanitization," such that the Confidential Information cannot be retrieved.

**“Discover, Discovery”** means the first day on which a Breach becomes known to Contractor, or, by exercising reasonable diligence would have been known to Contractor.

**“Legally Authorized Representative”** of an individual, including as provided in 45 CFR 435.923 (authorized representative); 45 CFR 164.502(g)(1) (personal representative); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164 (medical power of attorney); and Texas Estates Code § 22.031 (representative).

**“Required by Law”** means a mandate contained in law that compels an entity to use or disclose Confidential Information that is enforceable in a court of law, including court orders, warrants, subpoenas or investigative demands.

**“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.

**“Workforce”** means employees, volunteers, trainees or other persons whose performance of work is under the direct control of a party, whether or not they are paid by that party.

### ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

#### **Section 3.01 Obligations of Contractor**

Contractor agrees that:

**(A) With respect to PHI, Contractor shall:**

- (1) Make PHI available in a designated record set if requested by HHS, if Contractor maintains PHI in a designated record set, as defined in HIPAA.
- (2) Provide to HHS data aggregation services related to the healthcare operations Contractor performs for HHS pursuant to the Base Contract, if requested by HHS, if Contractor provides data aggregation services as defined in HIPAA.
- (3) Provide access to PHI to an individual who is requesting his or her own PHI, or such individual's Legally Authorized Representative, in compliance with the requirements of HIPAA.
- (4) Make PHI available to HHS for amendment, and incorporate any amendments to PHI that HHS directs, in compliance with HIPAA.
- (5) Document and make available to HHS, an accounting of disclosures in compliance with the requirements of HIPAA.
- (6) If Contractor receives a request for access, amendment or accounting of PHI by any individual, promptly forward the request to HHS or, if forwarding the request would violate HIPAA, promptly notify HHS of the request and of Contractor's response. HHS will respond to all such requests, unless Contractor is Required by Law to respond or HHS has given prior written consent for Contractor to respond to and account for all such requests.

**(B) With respect to ALL Confidential Information, Contractor shall:**

- (1) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as Required by Law. Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.
- (2) Establish, implement and maintain appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, in accordance with applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession.
- (3) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Base Contract. Contractor shall

produce, within three business days of a request by HHS, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.

(4) Obtain HHS's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce or Subcontractors of Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management and as permitted in Section 3.01(A)(3), above. Contractor shall produce evidence of completed training to HHS upon request. HHS, at its election, may assist Contractor in training and education on specific or unique HHS processes, systems and/or requirements. All of Contractor's Authorized Users, Workforce and Subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code Section 2054.519 by the Texas Department of Information Resources.

(5) Establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor shall maintain evidence of sanctions and produce it to HHS upon request.

(6) Obtain prior written approval of HHS, to disclose or provide access to any Confidential Information on the basis that such act is Required by Law, so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, Contractor shall refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief.

(7) Certify that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. Contractor and its Subcontractors shall maintain at all times an updated, complete, accurate list of Authorized Users and supply it to HHS upon request.

(8) Provide, and shall cause its Subcontractors and agents to provide, to HHS periodic written confirmation of compliance with controls and the terms and conditions of this DUA.

(9) Return to HHS or Destroy, at HHS's election and at Contractor's expense, all Confidential Information received from HHS or created or maintained by Contractor or any of Contractor's agents or Subcontractors on HHS's behalf upon the termination or expiration of this DUA, if reasonably feasible and permitted by law. Contractor shall certify in writing to HHS that all such Confidential Information has been Destroyed or returned to HHS, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor shall immediately notify HHS of the reasons such return or Destruction is not feasible and agree to extend the protections of this DUA to the Confidential Information for as long as Contractor maintains such Confidential Information.

(10) Complete and return with the Base Contract to HHS, attached as Attachment 2 to this DUA, the HHS Security and Privacy Initial Inquiry (SPI) at <https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>. The SPI identifies basic privacy and security controls with which Contractor must comply to protect Confidential Information. Contractor shall comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor's



security controls shall be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor shall update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and shall provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements.

(11) Comply with the HHS Acceptable Use Policy (AUP) and require each Subcontractor and Workforce member who has direct access to HHS Information Resources, as defined in the AUP, to execute an HHS Acceptable Use Agreement.

(12) Only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or encryption at an appropriate level as required by rule, regulation or law. Confidential Information at rest requires encryption unless there is adequate administrative, technical, and physical security as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information shall be through secure systems. Contractor shall provide proof of system, media or device security and/or encryption to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit, or the Discovery of a Breach. HHS may also request production of proof of security at other times as necessary to satisfy state and federal monitoring requirements. Deidentification of Confidential Information in accordance with HIPAA de-identification standards is deemed secure.

(13) Designate and identify a person or persons, as Privacy Official and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor shall provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. Upon written notice from HHS, Contractor shall promptly remove and replace such official(s) if such official(s) is not performing the required functions.

(14) Make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, regulations or demands of a regulatory authority relating to Confidential Information. Contractor shall provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.

(15) Comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 17-12;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;

- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
- Family Educational Rights and Privacy Act
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that Contractor supports on behalf of HHS.

(16) Be permitted to use or disclose Confidential Information for the proper management and administration of Contractor or to carry out Contractor's legal responsibilities, except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, if:

- (a) Disclosure is Required by Law;
- (b) Contractor obtains reasonable assurances from the person to whom the information is disclosed that the person shall:
  1. Maintain the confidentiality of the Confidential Information in accordance with this DUA;
  2. Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the person; and
  3. Notify Contractor in accordance with Section 4.01 of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.

**(C) With respect to ALL Confidential Information, Contractor shall NOT:**

- (1) Attempt to re-identify or further identify Confidential Information that has been deidentified, or attempt to contact any persons whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS.
- (2) Engage in prohibited marketing or sale of Confidential Information.
- (3) Permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of HHS without requiring that Subcontractor first execute either the Form Subcontractor Agreement, Attachment 1, or Contractor's own Subcontractor agreement that ensures that the Subcontractor shall comply with the same safeguards and restrictions contained in this DUA for Confidential Information. Contractor is directly responsible for its Subcontractors' compliance with, and enforcement of, this DUA.

#### **ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS**

##### **Section 4.01. Cooperation and Financial Responsibility.**

(A) Contractor shall, at Contractor's expense, cooperate fully with HHS in investigating, mitigating to the extent practicable, and issuing notifications as directed by HHS, for any Breach of Confidential Information.

(B) Contractor shall make Confidential Information in Contractor's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach.

(C) Contractor's obligation begins at the Discovery of a Breach and continues as long as related activity continues, until all effects of the Breach are mitigated to HHS's satisfaction (the "incident response period").

**Section 4.02. Initial Breach Notice.**

For federal information *obtained from a federal system of records*, including Federal Tax Information and Social Security Administration Data (which includes Medicaid and other governmental benefit program Confidential Information), Contractor shall notify HHS of the Breach within the first consecutive clock hour of Discovery. The Base Contract shall specify whether Confidential Information is obtained from a federal system of records. For all other types of Confidential Information Contractor shall notify HHS of the Breach not more than 24 hours after Discovery, *or in a timeframe otherwise approved by HHS in writing*. Contractor shall initially report to HHS's Privacy and Security Officers via email at: [privacy@HHSC.state.tx.us](mailto:privacy@HHSC.state.tx.us) and to the HHS division responsible for the Base Contract.

Contractor shall report all information reasonably available to Contractor about the Breach.

Contractor shall provide contact information to HHS for Contractor's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

**Section 4.03 Third Business Day Notice:** No later than 5 p.m. on the third business day after Discovery, or a time within which Discovery reasonably should have been made by Contractor of a Breach of Confidential Information, Contractor shall provide written notification to HHS of all reasonably available information about the Breach, and Contractor's investigation, including, to the extent known to Contractor:

- a. The date the Breach occurred;
- b. The date of Contractor's and, if applicable, Subcontractor's Discovery;
- c. A brief description of the Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);
- d. A brief description of Contractor's investigation and the status of the investigation;
- e. A description of the types and amount of Confidential Information involved;
- f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable, the Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method;
- g. Contractor's initial risk assessment of the Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;
- h. Contractor's recommendation for HHS's approval as to the steps individuals and/or Contractor on behalf of individuals, should take to protect the individuals from potential harm, including Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an individual with special capacity or circumstances;
- i. The steps Contractor has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

- j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Breach;
- k. Identify, describe or estimate of the persons, Workforce, Subcontractor, or individuals and any law enforcement that may be involved in the Breach;
- l. A reasonable schedule for Contractor to provide regular updates regarding response to the Breach, but no less than every three (3) business days, or as otherwise directed by HHS in writing, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- m. Any reasonably available, pertinent information, documents or reports related to a Breach that HHS requests following Discovery.

**Section 4.04. Investigation, Response and Mitigation.**

- (A) Contractor shall immediately conduct a full and complete investigation, respond to the Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.
- (B) Contractor shall complete or participate in a risk assessment as directed by HHS following a Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) Contractor shall fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, persons and/or individuals about the Breach.
- (D) Contractor shall fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

**Section 4.05. Breach Notification to Individuals and Reporting to Authorities.**

- (A) HHS may direct Contractor to provide Breach notification to individuals, regulators or third-parties, as specified by HHS following a Breach.
- (B) Contractor must comply with all applicable legal and regulatory requirements in the time, manner and content of any notification to individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in Contractor's name and on Contractor's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of Contractor's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.
- (C) Contractor shall provide HHS with draft notifications for HHS approval prior to distribution and copies of distributed and approved communications.
- (D) Contractor shall have the burden of demonstrating to the satisfaction of HHS that any required notification was timely made. If there are delays outside of Contractor's control, Contractor shall provide written documentation to HHS of the reasons for the delay.
- (E) If HHS directs Contractor to provide notifications, HHS shall, in the time and manner reasonably requested by Contractor, cooperate and assist with Contractor's information requests in order to make such notifications.

## ARTICLE 5. GENERAL PROVISIONS

### **Section 5.01 Ownership of Confidential Information**

Contractor acknowledges and agrees that the Confidential Information is and shall remain the property of HHS. Contractor agrees it acquires no title or rights to the Confidential Information.

### **Section 5.02 HHS Commitment and Obligations**

HHS will not request Contractor to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

### **Section 5.03 HHS Right to Inspection**

At any time upon reasonable notice to Contractor, or if HHS determines that Contractor has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of Contractor to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General, the Office of the Attorney General of Texas, the State Auditor's Office, outside consultants, legal counsel or other designee.

### **Section 5.04 Term; Termination of DUA; Survival**

This DUA will be effective on the date on which Contractor executes the Base Contract and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended, this DUA is extended to run concurrent with the Base Contract.

(A) If HHS determines that Contractor has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require Contractor to submit to a corrective action plan, including a plan for monitoring and plan for reporting as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide Contractor with a reasonable period to cure the violation as determined by HHS; or
- (4) Terminate the DUA and Base Contract immediately and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to Contractor describing the violation and the action it intends to take.

(B) If neither termination nor cure is feasible, HHS shall report the violation to the applicable regulatory authorities.

(C) The duties of Contractor or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

**Section 5.05 Injunctive Relief**

(A) Contractor acknowledges and agrees that HHS may suffer irreparable injury if Contractor or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) Contractor further agrees that monetary damages may be inadequate to compensate HHS for Contractor's or its Subcontractor's failure to comply. Accordingly, Contractor agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

**Section 5.06 Indemnification**

Contractor shall indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of HHS' Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of Contractor's Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure. Upon demand, Contractor shall reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including costs of required notices, investigation, and mitigation of a Breach, fines or penalties imposed on an Indemnified Party by a regulatory authority, and reasonable attorneys' fees) which may be imposed upon any Indemnified Party to the extent caused by and which results from the Contractor's failure to meet any of its obligations under this DUA. Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

**Section 5.07 Insurance**

(A) In addition to any insurance required in the Base Contract, at HHS's option, HHS may require Contractor to maintain, at its expense, the special and/or custom first- and third-party insurance coverages, including without limitation data breach, cyber liability, crime theft and notification expense coverages, with policy limits sufficient to cover any liability arising under this DUA, naming the State of Texas, acting through HHS, as an additional named insured and loss payee, with primary and noncontributory status.

(B) Contractor shall provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

**Section 5.08 Entirety of the Contract**

This DUA is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

**Section 5.09 Automatic Amendment and Interpretation**

Upon the effective date of any amendment or issuance of additional regulations to any law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS

and/or Contractor remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and Contractor to comply with laws applicable to Confidential Information.

**Section 5.10 Notices; Requests for Approval**

All notices and requests for approval related to this DUA must be directed to the HHS Chief Privacy Officer at [privacy@hhsc.state.tx.us](mailto:privacy@hhsc.state.tx.us).

**ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM**  
**HHS CONTRACT NUMBER**

\_\_\_\_\_

The DUA between HHS and Contractor establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with \_\_\_\_\_ (Subcontractor) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. Subcontractor acknowledges, understands and agrees to be bound by the same terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. Contractor and Subcontractor agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right, but not the obligation, to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

Contractor and Subcontractor assure HHS that any Breach as defined by the DUA that Subcontractor Discovers shall be reported to HHS by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by Subcontractor that constitutes a material breach or violation of the DUA or the Subcontractor's obligations, Contractor shall:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with Subcontractor, if feasible;
3. Notify HHS immediately upon Discovery of the pattern of activity or practice of Subcontractor that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate Subcontractor's contract or arrangement.

**This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.**

**CONTRACTOR**

**SUBCONTRACTOR**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE** \_\_\_\_\_, **201** .

**DATE:** \_\_\_\_\_



**Attachment 2-  
Security and Privacy Initial Inquiry  
[Attach Completed SPI Here]**



**MAINTENANCE AGREEMENT – DIR-TSO-3987  
(AFFILIATED TELEPHONE, INC)  
Solicitation No. HHS0005916  
8/19/2019 – Open Date**

**Texas Department of Health and Human Services (HHSC)  
6101 East Oltorf St.  
Austin, TX 78741  
(512) 437-8000**

**Delivery address:**

**Texas Department of Health and Human Services Commission  
1100 W. 49<sup>th</sup> St. MC:2020  
Austin Texas 78756  
Procurement and Contracting Services  
Building S –Bid Room  
ATTN: Response Coordinator**

## Table of Contents

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## Summary

Affiliated Communications appreciates the opportunity to submit this bid to HHSC. Affiliated has enjoyed our long history together and we hope to continue our relationship. Affiliated has recently brought in Steve Springfield who will now be HHSC account representative moving forward. Steve is available to meet with HHSC on a regular basis and keep HHSC informed on options that may be available to HHSC in managing their telecommunications platform.

Affiliated has read and understood the requirements as expressed in this bid. We want to bring a few things to the attention of HHSC. We have included and updated our 2018 maintenance contract/proposal and have added options to address some request that are not currently covered in our maintenance contract. Affiliated has provided these as optional items for HHSC.

The current HHSC platform is aging and some of the applications and products are nearing end of life.

The Syn-apps application can be covered for 2 additional years but then would need to be upgraded at current market pricing as support is ending for the current release after 2 years. Syn-apps is offering a replacement program at 50% discount if purchase by end of 2019. Steve Springfield will be able to provide additional information on the new replacement product.

The Data switches can be covered for 2 years and then will probably need to be upgraded depending on the availability of replacement gear. The Nortel data switches are no longer manufactured. Affiliated does have current back up stock that we believe is sufficient for the next 2 years.

Affiliated has added an Appendix A & B. Appendix A covers our exceptions and options. Appendix B is required documents per the bid.

SAL monitoring is no longer available through Avaya Partners. However HHSC can access AVAYA cloud services through Avaya directly. Affiliated has confirmed from AVAYA that

***“Customer must have Support Advantage Preferred to get proactive alarm monitoring with Expert Systems.”***

***Affiliated will work with HHSC and AVAYA to get the monitoring set up from Expert System as HHSC does have Support Advantage Preferred.***

Again, Affiliated appreciates HHSC and the relationship we have had and we hope to continue that.

1. This Maintenance Agreement, hereinafter, referred to as the “Agreement” is between Affiliated Communications, Inc. (hereinafter “ACI”) and HHSC DDS (hereinafter “Buyer”).)

2. **TERM**

ACI shall provide service (parts and labor) on the equipment (Appendix A) beginning on September 1, 2019 and continuing through August 31, 2021, (the “Term”), and shall be automatically renewed for consecutive terms of one year, unless either party gives written notice, at least thirty (30) days prior to the end of the then current term.

3. **EQUIPMENT AND CONTRACT DESCRIPTION**

Total 2-year Price	\$372,545.32
Annual Price	\$186,272.66
Service Times	24X7
Equipment Covered	Per bid outline, no phones.

4. **AGREEMENT**

It is agreed to and understood that this Agreement constitutes the entire Agreement between the parties, and supersedes and replaces all other prior understanding or agreements relating to equipment and services covered by this Agreement. This Agreement may not be changed, modified or varied except by the specific written and signed approval by authorized representatives of both parties. It is understood and agreed by and between the parties hereto, that if there is any conflict between this Agreement and client’s purchase order, or any other document, this Agreement will govern.

5. **SERVICE SCHEDULE**

- A. Standard Service for HHSC DDS is Monday through Sunday, 24 X 7. Down systems shall be dispatched within one (1) hour of call-in time.
- B. Emergency Service is defined at 25% of the "Buyer's" system out-of-service, first trunks of the "Buyer's" main line out-of-service, a console out-of-service, or any particulars needed covered in Appendix A and will be dispatched within 1 hours of call-in time, 7 days by 24 hours.

6. **EXCLUSIONS**

This Agreement does not include equipment lost, stolen, or damaged due to negligence, tampering, misuse, accident, or resulting from electrical storms, lightning due to violent weather, power outages or failure to maintain proper equipment environment nor the labor associated with the repair or replacement of these parts. Exclusions are also covered in Appendix A.

7. **MANUFACTURER SUPPORT**

Effective July 1, 2010, All Non End-of-Life (EOL) AVAYA voice systems and applications will require an Avaya support agreement (PASS/Support Advantage) in order to access 2<sup>nd</sup> level manufacturer support. Support Advantage/Upgrade Advantage can be purchased through Affiliated for all software that has not reach End of Life status. For all EOL releases, limited support from the manufacturer is available on a Time & Material basis. Affiliated will continue to support EOL releases for equipment at our normal contracted response times.

Supported Software Releases (Support Advantage Contract Required)

Active Status (current)	Full Support
Sustained Status (Previous)	Full Support
Manufacture Discontinued Status	Basic Support, no new patches/fixes

8. **LIMITATIONS OF LIABILITY**

ACI will not be liable for any injury, damage, or claim to persons and properties that may arise through the operation or maintenance of the system or failures thereof. In no event will ACI be liable for any indirect, incidental, or consequential damages, including but not limited to loss of business, loss of use, and loss of profits. ACI shall not be liable for failure to perform due strikes, lock-out, civil disturbances, or Acts of God beyond "ACI's" control.

9. **TERMINATION**

In the event of a breach or failure to perform obligation under the contract, written notice shall be provided and the party responsible for the failure shall be given 30 days to cure the default. Failure to cure would provide the other party the right to terminate. In any case either party has the right to terminate with 30 days advance notification.

10. **AUTHORIZED REPRESENTATIVES**

**The following Buyer’s representatives are authorized to open tickets**

Dwayne Miller  
CUSTOMER CONTACT A

Telecom Tech  
TITLE

Anthony Penn  
CUSTOMER CONTACT B

Telecom Tech  
TITLE

Rick Moothery  
CUSTOMER CONTACT C

Unit Manager  
TITLE

11. **CUSTOMER SERVICE REPRESENTATIVE**

To request Service, 24 hours per day, 7 days a week, call the local Affiliated Customer Service Hotline.

Austin/San Antonio (512) 977-8787

**SIGNING SECTION**

On this day, Texas Health and Human Services Commission, we The “Buyer” want the Vendor “(ACI)” to provide Telecommunication Service to our company.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Agreed to by ACI Representative.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPENDIX A**

TERM: 9/1/2019 to 8/31/2021

Company Name: HHSC DDS  
Address: 6101 East Oltorf St  
City, State, Zip: Austin, TX 78741  
Service Contact: Dwayne Miller  
Contact Number: (512) 437-8044

**BILLING INFORMATION**

Company Name: HHSC DDS  
Address: 6101 East Oltorf St  
City, State, Zip: Austin, TX 78741  
Billing Contact:  
Contact Number: (512) 437-8000  
Email:  
Billing Term: Yearly  
PO Required: Yes No

Affiliated is covering PBX Core system (CM, Session and System Manager, Messaging, IQ, gateways and LSPs), Music on Hold, Contact Center, Standard Paging, IP Clocks

Also, included are Support Advantage and Upgrade Advantage services from Avaya. Syn-Apps hardware and software are covered with manufacturer support. Veramark Call Accounting is software is covered. Affiliated is including monitoring of the PBX for alarms. Affiliated is covering Nortel Data Switches

**SPECIFIC EXCLUSIONS UNLESS COVERAGE IS SELECTED**

Affiliated will provide technical support but will not provide replacement of the following items:

IP Phones  
IP speakers and IP speaker system



Data Switches – Avaya’s data portfolio was acquired by Extreme Networks. The end of Sale date and End of Manufacturer Support date for the solution covered herein occurred 5/4/2016. Release 5.7 is considered in Extended Services Support period which will remain in effect until December 14, 2021. This will continue to be supported at Manufacturer Discontinued level in Section 7 of this document and a support contract will remain in place for this term.

Affiliated will assist in troubleshooting UPS Chassis hardware and battery issues, but will not cover failed/faulty batteries or replace chassis that are not under manufacturer support. Labor to install new UPS systems purchased from Affiliated is included.

Avaya Aura Conferencing – current hardware platform will not support future updates/upgrades. New hardware will need to be acquired at an additional cost so that updates and upgrades can be made.

Avaya IQ – Avaya Professional Services is the only authorized technical resource that is allowed to perform upgrades to IQ. The Avaya DIR contract will be utilized for cost of services.

Affiliated is providing maintenance and support on existing equipment and cannot be held responsible for manufacturer discontinued systems/application or for hardware which no longer meets specifications for upgrades. Affiliated also cannot be held financially responsible for applications which can only be upgraded by Avaya Professional Service. Avaya labor rates are determined by DIR contract. Affiliated will provide our best effort to provide labor to upgrade systems and applications as part of this contract.

### **SUPPORT BREAKDOWN**

Avaya Support Agreement-

- Support Advantage Preferred and Upgrade Advantage
- Veramark Call Accounting Software
- Syn-Apps
- Avaya Data Switches
- IQ Security Certificate
- Affiliated Maintenance & Support

### **TIME AND MATERIAL RATES:**

Monday – Friday (8-5)      \$110.00/hour

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.





**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE 
APPLICANT ORGANIZATION 	DATE SUBMITTED 

### CERTIFICATION REGARDING LOBBYING

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\* APPLICANT'S ORGANIZATION

\* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Prefix:  \* First Name:  Middle Name:

\* Last Name:  Suffix:

\* Title:

\* SIGNATURE:

\* DATE:

## Fiscal Federal Funding Accountability and Transparency Act (FFATA) CERTIFICATION

The certifications enumerated below represent material facts upon which DSHS relies when reporting information to the federal government required under federal law. If the Department later determines that the Contractor knowingly rendered an erroneous certification, DSHS may pursue all available remedies in accordance with Texas and U.S. law. Signor further agrees that it will provide immediate written notice to DSHS if at any time Signor learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. **If the Signor cannot certify all of the statements contained in this section, Signor must provide written notice to DSHS detailing which of the below statements it cannot certify and why.**

<b>Legal Name of Contractor:</b>	<b>FFATA Contact # 1 Name, Email and Phone Number:</b>
<b>Primary Address of Contractor:</b>	<b>FFATA Contact #2 Name, Email and Phone Number:</b>
<b>ZIP Code: 9-digits Required <a href="http://www.usps.com">www.usps.com</a></b> <input style="width: 100%; height: 20px;" type="text"/>	<b>DUNS Number: 9-digits Required <a href="http://www.sam.gov">www.sam.gov</a></b> <input style="width: 100%; height: 20px;" type="text"/>
<b>State of Texas Comptroller Vendor Identification Number (VIN) 14 Digits</b> <input style="width: 100%; height: 20px;" type="text"/>	

<b>Printed Name of Authorized Representative</b>	<b>Signature of Authorized Representative</b>
<b>Title of Authorized Representative</b>	<b>Date</b>

## Fiscal Federal Funding Accountability and Transparency Act (FFATA) CERTIFICATION

**As the duly authorized representative (Signor) of the Contractor, I hereby certify that the statements made by me in this certification form are true, complete and correct to the best of my knowledge.**

Did your organization have a gross income, from all sources, of less than \$300,000 in your previous tax year?  Yes  No

If your answer is "Yes", skip questions "A", "B", and "C" and finish the certification.  
If your answer is "No", answer questions "A" and "B".

**A. Certification Regarding % of Annual Gross from Federal Awards.**

Did your organization receive 80% or more of its annual gross revenue from federal awards during the preceding fiscal year?  Yes  No

**B. Certification Regarding Amount of Annual Gross from Federal Awards.**

Did your organization receive \$25 million or more in annual gross revenues from federal awards in the preceding fiscal year?  Yes  No

If your answer is "Yes" to both question "A" and "B", you must answer question "C".  
If your answer is "No" to either question "A" or "B", skip question "C" and finish the certification.

**C. Certification Regarding Public Access to Compensation Information.**

Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?  Yes  No

**If your answer is "Yes" to this question, where can this information be accessed?**

**If your answer is "No" to this question, you must provide the names and total compensation of the top five highly compensated officers below.**

**Provide compensation information here:**



- 4.5 Respondent must provide the following contact information for the submitted response:

STEVE SPRINGFIELD  
Respondent Contact Person **PLEASE PRINT**  
512.225.6562 / 512.413.4039  
Respondent Contact Person's Telephone Number / Fax Number / Mobile Number  
SSPRINGFIELD@AFFILIATED.COM.COM  
E-mail Address

## 5. DESIGNATED POINT OF CONTACT

The HHSC/ PCS sole Point of Contact for inquiries concerning this solicitation is:

Purchaser's Name:	Mark Cooper
Telephone:	512-406-2442
Email address:	Mark.Cooper@hhsc.state.tx.us

- 5.1 Direct all communications relating to this solicitation to the HHSC/PCS contact person named above.
- 5.2 All other communications between a respondent and HHS agency staff concerning this solicitation are prohibited.
- 5.3 In no instance is a respondent to discuss cost information contained in a response with the HHSC/ PCS Point of Contact or any other staff prior to response evaluation.
- 5.4 **Failure to comply with these requirements may result in response disqualification.**

## 6. PCS ANNOUNCEMENTS REGARDING THIS SOLICITATION

PCS will post the notice of award for solicitations exceeding \$25,000 on the Electronic State Business Daily ("ESBD").

## 7. HISTORICALLY UNDERUTILIZED BUSINESS

- 7.1 Requirements:

HHSC is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study.

HHSC encourages the use of Historically Underutilized Businesses ("HUBs") through race, ethnic and gender-neutral means. HHSC has adopted administrative rules relating to HUBs, and a Policy on the Utilization of HUBs, which is located on HHSC's website<sup>1</sup>.

<sup>1</sup> Reference: <https://hhs.texas.gov/doing-business-hhs/contracting-hhs/historically-underutilized-business-opportunities-program>





**Routing Request**

PCS.515

**Section 1: Request Information**

Contract No.:   New  Amendment No.:

Work Order No.:   New  Amendment No.:

Emergency  
(See Tex. Gov. Code Ch. 418; §2155.137 and TAC §20.41)

Contractor Legal Business Name:

Total Contract Value (including renewals):  Requesting Agency/Program:

Contract Manager Name:  Buyer Name:

Contract Manager E-mail:  Buyer E-mail:

Contract Manager Phone:  Buyer Phone:

**Section 2: CAPPS Approvals - The individuals listed shall be program specific contract approvers as designated by the program area.**

Approver Title	Approver Name	Approver E-mail Address	See attached proof of approval
1. HHSC Legal Counsel	Feeney,Patrick (HHSC) for Matt Malerich	Patrick.Feeney@hhsc.state.tx.us	<input checked="" type="checkbox"/>
2. A.C. - HHSC/AES/FCO/DDS	Wolfe,Mary (HHSC/DARS)	Mary.Wolfe@hhsc.state.tx.us	<input type="checkbox"/>
3. N/A			<input type="checkbox"/>
4. N/A			<input type="checkbox"/>
5. N/A			<input type="checkbox"/>
6. N/A			<input type="checkbox"/>
7. N/A			<input type="checkbox"/>
8. N/A			<input type="checkbox"/>
9. N/A			<input type="checkbox"/>
10. N/A			<input type="checkbox"/>
11. N/A			<input type="checkbox"/>
12. N/A			<input type="checkbox"/>
13. N/A			<input type="checkbox"/>
14. N/A			<input type="checkbox"/>
15. Deputy Executive Commissioner (\$1M and over only)	N/A		<input type="checkbox"/>



## Routing Request

PCS.515

### Section 3: DocuSign Signatories

Signatory	Name	E-mail Address
Contractor Signature Authority	Steve Springfield	sspringfield@aff-com.com
Additional Contractor Signature Authority*	N/A	
Contractor Signature cc	Jim Carter (DIR-TSO-3987 Contract)	jcarter@affiliatedcom.com
HHS Budget (\$1M and over only)	Greta Rymal	greta.rymal@hhsc.state.tx.us
Legal Director (\$1M and over only)	Andy Marker	edward.marker@hhsc.state.tx.us
Office of Chief Counsel (\$1M and over only)	Karen Ray	karen.ray@hhsc.state.tx.us
HHS Signature Authority	Salter, Wayne (HHSC) - D.E.C., HHSC/AES	Wayne.Salter@hhsc.state.tx.us
HHS Signature Authority cc	HHS Executive Clerk	HHSExecutiveClerk@hhsc.state.tx.us
General Inbox cc	AES Contract Operations Routing	aes_contract_operations_routing@hhsc.state.tx.us

### Instructions

#### PURPOSE

To direct HHS contracts, work orders, amendments, renewals, and extensions through routing for the contract document's final approval and execution process.

#### WHEN TO PREPARE THIS FORM

The routing request form shall be completed for any document requiring CAPPs FIN 9.2 approval routing and for all DocuSign signature routing. Requestor shall adhere to any HHS Circular-46 requirements as well as consult with program to complete the form prior to submission to Procurement and Contracting Services Quality Assurance ("PCS QA"). The information provided on the routing request form will be used by PCS QA to create the document routing approval path in CAPPs FIN 9.2 as well as create the DocuSign path for contractor signatory and HHS signatory execution.

#### PROCEDURES

Section 1: To be completed by Buyer and Program. This section shall contain the necessary contract information.

Section 2: To be completed by the Program area. This section shall contain all required program specific approvers. These individuals will be inserted into the CAPPs approval process. For contracts valued at \$1M and over, the program Deputy Executive Commissioner is required.

Section 3: To be completed by the Program area. This section shall contain all required contract signatory information. These individuals will be inserted into the DocuSign routing path. For contracts valued at \$1M and over, Deputy Executive Commissioner of Financial Services, Legal Director, and Chief Counsel are required.

**\*\*There are certain aspects of this form that do not apply to DFPS.\*\***

\* If adding second contractor signature authority, please provide instructions on which documents need to be completed by this individual.

## Document Approval Status

SetID HHSTX  
Supplier AFFILIATED TELEPHONE INC

Contract ID HHS000660600001

▼ **Review/Edit Approvers**

### Procurement QA Approval

▼ **:Approved** View/Hide Comments

Procurement QA Group

<b>Approved</b> ✔ Ortiz, Yvonne Lee Procurement QA for DocumentAWE 10/18/19 - 4:43 PM	→	<b>Approved</b> ✔ Wolfe, Mary L Inserted Approver 10/18/19 - 4:47 PM
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▼ **Comment History**

**Parks, Michael David at 10/18/19 - 4:27 PM**  
[View History](#)

### Legal Approval

▼ **:Approved** View/Hide Comments

Legal Approval

<b>Skipped</b> ⚠ No approvers found HHSC Doc AWE Cntrct Doc Legal	→	<b>Approved</b> ✔ Feeney, Patrick Joseph Inserted Approver 10/18/19 - 4:49 PM	→	<b>Approved</b> ✔ Ortiz, Yvonne Lee Error Step 10/18/19 - 4:53 PM
---	---	--	---	--

▼ **Comment History**

**Parks, Michael David at 10/18/19 - 4:27 PM**  
[View History](#)

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## REQUEST DOCUMENT

### General Purchase Request

Requestor	00000113362 - Bradshaw,Debbie
Requisition ID	0000075751
Document ID	ADH0000000000000000075007
Document Owner	00000113362 - Bradshaw,Debbie

#### Goods/Services Detail

Detailed description/Scope of request (what are you buying?)Detail description of the contract request	DDS' Avaya telephone maintenance service contract with Affiliated will expire with no renewals remaining 8/31/2019. In order to continue telephone maintenance services uninterrupted starting 9/1/2019, we are entering this requisition to start the solicitation process.
Justification of request	DDS' Avaya telephone maintenance service contract with Affiliated will expire with no renewals remaining 8/31/2019. In order to continue telephone maintenance services uninterrupted starting 9/1/2019, we are entering this requisition to start the solicitation process.
Initial estimated total value of the purchase or contract(s) including potential extensions/renewals	\$ 198,272.660
Request category	Goods and Services
Anticipated start date for services or delivery date for goods	September 01, 2019
Estimated total value of Goods	\$ 8,000.000
Estimated total value of Service	\$ 190,272.660
Service category	Repair/Maintenance
Construction Project#	

#### Emergency/Expedited Request

Emergency/Expedited request?	None
Justification	

#### Sole Source/Proprietary

Sole source/Proprietary?	Neither
Justification	



## REQUEST DOCUMENT

### General Purchase Request

**EIR Request**

EIR Request	No
-------------	----

**IT Request**

IT request category	None
IT Hardware sub-category	
IT Peripherals sub-category	
Is this a new IT position?	

**Contract Request**

Anticipated award	PO
MOU/MOA contract?	
Inter-agency or inter-local contract?	
Contractor/Sub-recipient relationship	
Agency lead contact	
Contract manager	
Does the request involve exchange of confidential information?	
Will the awardee be a HIPAA business associate?	
ACA assigned risk level	

**Supplemental information and comments**



**Requisition**

**Requisition Number 0000075751**

Prepared By: Parks, Michael David  
 Run Date: 5/31/2019 15:30 PM  
 Prompts: Business Unit: 52900  
 Req Begin Date:

Req ID: 0000075751  
 Req End Date:

Requestor:  
 Cancelled Req: N

**Requisition Date:** 04/08/2019 **Purchase Order #:** \_\_\_\_\_  
**Origin:** BG4 - 529-AP Disability Determinatio **GSC Purchase Order:** \_\_\_\_\_  
**Business Unit:** HHSTX **Date Issued:** \_\_\_\_\_  
**Document Status:** Approved  
**Header Description:**  
**Requestor:** Bradshaw, Debbie **Requestor Phone:** 512/437-8449

**Header Comments**

Health & Human Services Commission  
 Mail Code: 3500  
 4900 N. Lamar Blvd,  
 Austin, TX 78751  
 Bill To Code: 3500  
 Medical & Social Services Division  
 Final Destination customer: Debbie Bradshaw  
 Phone: 512-437-8449  
 Email address: DDS.TX.S49.AP@ssa.gov  
 HHS or the agency does not commit to ordering specific quantities or dollar amounts with respect to this purchase order. The agency shall be obligated to pay for only those services actually ordered and received by the agency. Any funds not utilized by 8/31/2020 are automatically cancelled.  
 Please send all invoices to Disability Determination Services, PO Box 149198, Austin, TX 78714-9198 for authorization.  
 Confidential Information:  
 Awarded vendor will not have access to confidential information.  
 Contract Manager: Rey Velazquez  
 Email: reynaldo.velazquez@hhsc.state.tx.us

DDS' Avaya telephone maintenance service contract with Affiliated will expire with no renewals remaining 8/31/2019. In order to continue telephone maintenance services uninterrupted starting 9/1/2019, we are entering this requisition to start the solicitation process.

**REQUISITION DETAIL**

Line	Sched	Class / Item or Commodity	Description	Due Date	Qty	UOM	Price	Extended Amount
1	1	939 / 72	9/1/2019 - 9/30/2019 Avaya telephone maintenance contract. Avaya telephone systems & application, Monday-Sunday 24x7, includes parts & labor; Avaya SA Preferred & Upgrade Advantage; Avaya Data; Syn-Apps, and VeraSmart call accounting	09/01/2019	1	LOT	15272.72	15272.72

<u>Distrib</u>	<u>Acct</u>	<u>Dept ID</u>	<u>Fund</u>	<u>Class</u>	<u>Prog</u>	<u>Project</u>	<u>Amount</u>
1	751400	PDDS1	0001	03282	8844A	DDS100F-ADMIN19	15272.72

**Buyer:** 00000217387 **Buyer Phone:**  
**Vendor:** 1751964065 - AFFILIATED TELEPHONE INC **Vendor Item:**  
**Ship To:** **Location:**

**Requisition**

**Requisition Number 000075751**

Prepared By: Parks,Michael David  
 Run Date: 5/31/2019 15:30 PM  
 Prompts: Business Unit:52900  
 Req Begin Date:

Req ID: 000075751  
 Req End Date:

Requestor:  
 Cancelled Req: N

Austin : 6101 E Oltorf

Austin : 6101 E Oltorf

HEALTH & HUMAN SERVICES COMMISSION

Disability Determination Servi

6101 E Oltorf

Austin, TX

78741

**Line Comments**

**REQUISITION DETAIL**

Line	Sched	Class / Item or Commodity	Description	Due Date	Qty	UOM	Price	Extended Amount
2	1	939 / 72	9/1/2019 - 9/30/2019 As needed for costs for equipment or services not covered under the contract	09/01/2019	1	LOT	1000	1000

<u>Distrib</u>	<u>Acct</u>	<u>Dept ID</u>	<u>Fund</u>	<u>Class</u>	<u>Prog</u>	<u>Project</u>	<u>Amount</u>
1	751400	PDDS1	0001	03282	8844A	DDS100F-ADMIN19	1000

**Buyer:** 00000217387

**Buyer Phone:**

**Vendor:** 1751964065 - AFFILIATED TELEPHONE INC

**Vendor Item:**

**Ship To:**

**Location:**

Austin : 6101 E Oltorf

Austin : 6101 E Oltorf

HEALTH & HUMAN SERVICES COMMISSION

Disability Determination Servi

6101 E Oltorf

Austin, TX

78741

**Line Comments**

**REQUISITION DETAIL**

Line	Sched	Class / Item or Commodity	Description	Due Date	Qty	UOM	Price	Extended Amount
3	1	939 / 72	10/1/2019 - 8/31/2020 Avaya telephone maintenance contract. Avaya telephone systems & application, Monday-Sunday 24x7, includes parts & labor; Avaya SA Preferred & Upgrade Advantage; Avaya Data; Syn-Apps, and VeraSmart call accounting	09/01/2019	1	LOT	167999.94	167999.94



Requisition

Requisition Number 000075751

Prepared By: Parks,Michael David  
 Run Date: 5/31/2019 15:30 PM  
 Prompts: Business Unit:52900  
 Req Begin Date:

Req ID: 000075751  
 Req End Date:

Requestor:  
 Cancelled Req: N

<u>Distrib</u>	<u>Acct</u>	<u>Dept ID</u>	<u>Fund</u>	<u>Class</u>	<u>Prog</u>	<u>Project</u>	<u>Amount</u>
1	751400	PDDS1	0001	03282	8844A	DDS100F-ADMIN20	167999.94

Buyer: 00000217387

Buyer Phone:

Vendor: 1751964065 - AFFILIATED TELEPHONE INC

Vendor Item:

Ship To:

Location:

Austin : 6101 E Oltorf  
 HEALTH & HUMAN SERVICES COMMISSION  
 6101 E Oltorf  
 Austin, TX  
 78741

Austin : 6101 E Oltorf  
 Disability Determination Servi

Line Comments

REQUISITION DETAIL

Line	Sched	Class / Item or Commodity	Description	Due Date	Qty	UOM	Price	Extended Amount
4	1	939 / 72	10/1/2019 - 8/31/2020 As needed for costs for equipment or services not covered under the contract	09/01/2019	1	LOT	14000	14000

<u>Distrib</u>	<u>Acct</u>	<u>Dept ID</u>	<u>Fund</u>	<u>Class</u>	<u>Prog</u>	<u>Project</u>	<u>Amount</u>
1	751400	PDDS1	0001	03282	8844A	DDS100F-ADMIN20	14000

Buyer: 00000217387

Buyer Phone:

Vendor: 1751964065 - AFFILIATED TELEPHONE INC

Vendor Item:

Ship To:

Location:

Austin : 6101 E Oltorf  
 HEALTH & HUMAN SERVICES COMMISSION  
 6101 E Oltorf  
 Austin, TX  
 78741

Austin : 6101 E Oltorf  
 Disability Determination Servi

Line Comments

Requisition Grand Total: **198,272.66**





**Requisition**

**Requisition Number 0000075751**

Prepared By: Parks,Michael David

Run Date: 5/31/2019 15:30 PM

Prompts: Business Unit:52900

Req Begin Date:

Req ID: 0000075751

Req End Date:

Requestor:

Cancelled Req: N

00000113362

Approved By	Approver Phone (Area + Number)	Date Approved	Entered In HHSAS By
			04/08/2019
Approved By	Approver Phone (Area + Number)	Date Approved	Date Entered In HHSAS

**From:** [Malerich,Matthew \(HHSC\)](#)  
**To:** [Parks,Mike D \(HHSC/DSHS\)](#)  
**Cc:** [Cooper,Mark \(HHSC\)](#)  
**Subject:** RE: Affiliated Communications, Inc. - HHS0005916  
**Date:** Friday, October 18, 2019 3:08:47 PM

Mike:

The documents you provided are approved for execution.

Thank you

**Matthew Malerich** | Attorney  
Office of Chief Counsel | System Contracting  
4900 N. Lamar Blvd. | Mail Code: 1100  
Austin, TX 78751  
Office: 512-424-6519  
[www.hhs.texas.gov](http://www.hhs.texas.gov) | [www.dshs.texas.gov](http://www.dshs.texas.gov)



This message may contain confidential information. If you received this message in error, please notify me immediately and then delete the message.

**From:** Parks,Mike D (HHSC/DSHS)  
**Sent:** Friday, October 18, 2019 2:59 PM  
**To:** Malerich,Matthew (HHSC) <[Matthew.Malerich@hpsc.state.tx.us](mailto:Matthew.Malerich@hpsc.state.tx.us)>  
**Cc:** Cooper,Mark (HHSC) <[Mark.Cooper@hpsc.state.tx.us](mailto:Mark.Cooper@hpsc.state.tx.us)>  
**Subject:** RE: Affiliated Communications, Inc. - HHS0005916  
**Importance:** High

Please conduct a final Legal Review for the attached solicitation:

<b>Requisition:</b>	0000075751
<b>Event:</b>	HHS0005916
<b>Contract:</b>	HHS000660600001
<b>Vendor:</b>	Affiliated Communications, Inc.

\* NOTE: the documents have been updated to reflect the Contract Number instead of the Event Number, as applicable.

If there's anything else we can do to assist, please let me know.

**Michael D. Parks** | Tele: 512-406-2401 | [Michael.Parks2@hpsc.state.tx.us](mailto:Michael.Parks2@hpsc.state.tx.us)

**From:** Velazquez,Reynaldo (HHSC)  
**Sent:** Friday, October 18, 2019 10:04 AM  
**To:** Malerich,Matthew (HHSC) <[Matthew.Malerich@hpsc.state.tx.us](mailto:Matthew.Malerich@hpsc.state.tx.us)>; Parks,Mike D (HHSC/DSHS) <[Michael.Parks2@hpsc.state.tx.us](mailto:Michael.Parks2@hpsc.state.tx.us)>  
**Cc:** Feeney,Patrick (HHSC) <[Patrick.Feeney@hpsc.state.tx.us](mailto:Patrick.Feeney@hpsc.state.tx.us)>; Marker,Andy (HHSC) <[Edward.Marker@hpsc.state.tx.us](mailto:Edward.Marker@hpsc.state.tx.us)>; Cullers,Carmen (TXDDS) <[Carmen.Cullers@ssa.gov](mailto:Carmen.Cullers@ssa.gov)>; Wolfe,Mary (HHSC/DARS) <[Mary.Wolfe@hpsc.state.tx.us](mailto:Mary.Wolfe@hpsc.state.tx.us)>; Cooper,Mark (HHSC) <[Mark.Cooper@hpsc.state.tx.us](mailto:Mark.Cooper@hpsc.state.tx.us)>  
**Subject:** RE: Affiliated Communications, Inc. - HHS0005916

Matthew and Mike,

DDS and FCO are okay with the changes provided. We added some comments within the document responding to Matthew's comments. Please let us know if there is anything else needed from us to get the contract executed.

Thank you,

Rey Velazquez, CTCM  
Contract Administration Manager  
Data Broker and Disability Determination Services Team  
Finance and Contract Operations  
Phone: 512-206-5221

**From:** Malerich,Matthew (HHSC)  
**Sent:** Thursday, October 17, 2019 4:49 PM  
**To:** Velazquez,Reynaldo (HHSC) <[Reynaldo.Velazquez@hhsc.state.tx.us](mailto:Reynaldo.Velazquez@hhsc.state.tx.us)>  
**Cc:** Feeney,Patrick (HHSC) <[Patrick.Feeney@hhsc.state.tx.us](mailto:Patrick.Feeney@hhsc.state.tx.us)>; Marker,Andy (HHSC) <[Edward.Marker@hhsc.state.tx.us](mailto:Edward.Marker@hhsc.state.tx.us)>; Cullers,Carmen (TXDDS) <[Carmen.Cullers@ssa.gov](mailto:Carmen.Cullers@ssa.gov)>; Wolfe,Mary (HHSC/DARS) <[Mary.Wolfe@hhsc.state.tx.us](mailto:Mary.Wolfe@hhsc.state.tx.us)>; Cooper,Mark (HHSC) <[Mark.Cooper@hhsc.state.tx.us](mailto:Mark.Cooper@hhsc.state.tx.us)>; Parks,Mike D (HHSC/DSHS) <[Michael.Parks2@hhsc.state.tx.us](mailto:Michael.Parks2@hhsc.state.tx.us)>  
**Subject:** RE: Affiliated Communications, Inc. - HHS0005916

Reynaldo:

We have addressed your concerns in the attached Signature Document.

Thank you

**Matthew Malerich** | Attorney  
Office of Chief Counsel | System Contracting  
4900 N. Lamar Blvd. | Mail Code: 1100  
Austin, TX 78751  
Office: 512-424-6519  
[www.hhs.texas.gov](http://www.hhs.texas.gov) | [www.dshs.texas.gov](http://www.dshs.texas.gov)



This message may contain confidential information. If you received this message in error, please notify me immediately and then delete the message.

**From:** Velazquez,Reynaldo (HHSC)  
**Sent:** Thursday, October 17, 2019 3:22 PM  
**To:** Malerich,Matthew (HHSC) <[Matthew.Malerich@hhsc.state.tx.us](mailto:Matthew.Malerich@hhsc.state.tx.us)>; Cooper,Mark (HHSC) <[Mark.Cooper@hhsc.state.tx.us](mailto:Mark.Cooper@hhsc.state.tx.us)>; Parks,Mike D (HHSC/DSHS) <[Michael.Parks2@hhsc.state.tx.us](mailto:Michael.Parks2@hhsc.state.tx.us)>  
**Cc:** Feeney,Patrick (HHSC) <[Patrick.Feeney@hhsc.state.tx.us](mailto:Patrick.Feeney@hhsc.state.tx.us)>; Marker,Andy (HHSC) <[Edward.Marker@hhsc.state.tx.us](mailto:Edward.Marker@hhsc.state.tx.us)>; Cullers,Carmen (TXDDS) <[Carmen.Cullers@ssa.gov](mailto:Carmen.Cullers@ssa.gov)>; Wolfe,Mary (HHSC/DARS) <[Mary.Wolfe@hhsc.state.tx.us](mailto:Mary.Wolfe@hhsc.state.tx.us)>  
**Subject:** RE: Affiliated Communications, Inc. - HHS0005916  
**Importance:** High

Good afternoon,

Attached are the compiled comments from FCO Contracts and DDS. There are few items that we had sent questions back on 10/3/19 that were not addressed or that we still have questions on. I'm not sure if these questions were forwarded on to you when we initially reviewed the modified SOW.

The duration of the contract indicates that the contract will be effective on the date of the latter signature, but we need to have the contract effective starting on 9/1/2019. Additionally, the 9/1 date is listed in the SOW. Is there any issues with the language not covering services back to 9/1?

The dollar amounts under Section V were incorrect. They have been fixed through track changes.

The Affiliated contact has been included.

There were two items under Section XI – IP Clocks and the batteries/chassis for the UPS Chassis. This may be a question for PCS rather than Legal.

There is a question under Section XIV regarding the rate per hour. The SOW and signature page indicate that services are 24/7. The current rate only lists the rate for M-F from 8-5. The rate for work occurring outside those hours should also be included. This may be a question for PCS rather than Legal.

We need to have these addressed as possible to have the contract executed.

Thank you,

Rey Velazquez, CTCM  
Contract Administration Manager  
Data Broker and Disability Determination Services Team  
Finance and Contract Operations  
Phone: 512-206-5221

---

**From:** Malerich,Matthew (HHSC)  
**Sent:** Thursday, October 17, 2019 12:48 PM  
**To:** Wolfe,Mary (HHSC/DARS) <[Mary.Wolfe@hhsc.state.tx.us](mailto:Mary.Wolfe@hhsc.state.tx.us)>; Velazquez,Reynaldo (HHSC) <[Reynaldo.Velazquez@hhsc.state.tx.us](mailto:Reynaldo.Velazquez@hhsc.state.tx.us)>  
**Cc:** Feeney,Patrick (HHSC) <[Patrick.Feeney@hhsc.state.tx.us](mailto:Patrick.Feeney@hhsc.state.tx.us)>; Cooper,Mark (HHSC) <[Mark.Cooper@hhsc.state.tx.us](mailto:Mark.Cooper@hhsc.state.tx.us)>; Parks,Mike D (HHSC/DSHS) <[Michael.Parks2@hhsc.state.tx.us](mailto:Michael.Parks2@hhsc.state.tx.us)>; Salter,Wayne (HHSC) <[Wayne.Salter@hhsc.state.tx.us](mailto:Wayne.Salter@hhsc.state.tx.us)>; Marker,Andy (HHSC) <[Edward.Marker@hhsc.state.tx.us](mailto:Edward.Marker@hhsc.state.tx.us)>  
**Subject:** Affiliated Communications, Inc. - HHS0005916

Mary and Reynaldo:

Good afternoon.

The attached contractual documents are approved by System Contracting. Please review the attached documents to ensure that the specifications therein are in conformance with Program/IT requirements.

It is my understanding that PCS has within their possession, the other documents (that are not attached) which are referenced in Section VIII of the attached Signature Document.

Upon your approval, we recommend that PCS provide all contractual documents to Affiliated Communications, Inc. for review.

Thank you

**Matthew Malerich** | Attorney  
Office of Chief Counsel | System Contracting  
4900 N. Lamar Blvd. | Mail Code: 1100  
Austin, TX 78751  
Office: 512-424-6519  
[www.hhs.texas.gov](http://www.hhs.texas.gov) | [www.dshs.texas.gov](http://www.dshs.texas.gov)



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**TEXAS**  
Health and Human  
Services

**Texas Health and Human Services Commission**

---

April 2, 2019

**ACTION**

**MEMORANDUM FOR THE DEPUTY EXECUTIVE COMMISSIONER**

**TO:** Bart Broz  
Deputy Executive Commissioner for Procurement and Contracting  
Services

**THROUGH:** Victoria Ford  
Interim Chief Operating Officer

Steve Buche  
Chief Information Officer

Greta Rymal  
Deputy Executive Commissioner for Financial Services

Angela Koke  
Legal Contracting Services

Mark Cooper  
Procurement and Contracting Services

**FROM:** Wayne Salter  
Deputy Executive Commissioner  
Access and Eligibility Services

**SUBJECT:** Approval for Upcoming Information Technology Procurement with Affiliated  
Telephone, Inc.

**Purpose**

To seek approval to procure and execute an agreement with Affiliated Telephone, Inc. for fiscal year (FY) 2020 to provide telecommunications service and support for Disability Determination Services (DDS) totaling approximately \$200,000.

**Background Summary**

HHSC divisions support business needs with a wide variety of IT goods and services. DDS has identified the procurement detailed in the attached table as being necessary for providing telecommunications service and support.

DDS currently contracts with Affiliated Telephone, Inc. to service and maintain the Avaya phone system. The initial contract term was September 1, 2013, through August 31,

Action Memorandum for the Deputy Executive Commissioner  
April 2, 2019  
Page 2

2014, and allowed for five one-year renewals. In FY 2019, DDS and Affiliated Telephone, Inc. executed the final one-year renewal allowed by the contract.

**Discussion**

DDS is funded entirely by the Social Security Administration (SSA) and must meet certain SSA service delivery standards for phone availability. The agency requires phone service availability at least 97 percent of each business day on average per quarter.

In order for DDS to meet this requirement, an administrative service contract for maintenance of Avaya phones is vital. The Vendor must obtain Avaya's "Support Advantage Preferred" and "Upgrade Advantage" packages for this procurement. In addition, Avaya Data, Syn-Apps, Verasmart Call Accounting, IQ Certificate, and labor must be included in the procurement.

Affiliated Telephone, Inc. meets the agency's current needs. The contractor has obtained Avaya's "Support Advantage Preferred" and "Upgrade Advantage" packages under the current contract as well as offering Avaya Data, Syn-Apps, Verasmart Call Accounting, IQ Certificate, and labor. The current contract expires on August 31, 2019.

The anticipated cost for the resulting contract is approximately \$200,000.00 per year. The final cost will be determined through the contract negotiation and award process.

**Chief Financial Officer Comments**

Information Technology (ITBO) will coordinate.

*Please cover overall funding strategy, including any pending federal and state funding issues, any outstanding approvals, and any other funding issues of interest with these procurements.*

**HHS Legal Services Comments**

ITBO will coordinate.

*Please cover preliminary concurrence with proposed procurement strategies, confirmation that Legal is involved in these procurements, and any other legal issues of interest with these procurements.*

**HHS Procurement and Contracting Services (PCS) Comments**

ITBO will coordinate.

*Please confirm that proposed procurement strategies indicated are appropriate for the goods and services listed, that PCS is involved with these procurements, and any other procurement issues of interest with these procurements.*

**Information Resources Manager Comments**

ITBO will coordinate.

Action Memorandum for the Deputy Executive Commissioner  
April 2, 2019  
Page 3

*Please cover how these procurements fit the agency's overall technology strategy, any coordination with Enterprise initiatives and technology standards, and any other technology issues of interest with these procurements.*

**Recommendation**

Approval to procure items listed in Table 2 with no more than ten percent overage on each line's estimated cost. The need for the procurement has been verified and funds are available. Individual purchase orders will be issued for each item to encumber appropriate funds.

<b><u>Deputy Executive Commissioner's Decision</u></b>							
<input checked="" type="checkbox"/>	Approve	<input type="checkbox"/>	Disapprove	<input type="checkbox"/>	Modify	<input type="checkbox"/>	Schedule Briefing
Comments/Acknowledgment:							
<hr/>							
<hr/>							

Attachment

Table 2 - Waiver Requests

Table 2 - Waiver Requests

Line #	Brief Description of Goods/Services	Suggested Vendor	Reason for Waiver from Notification	Date Needed and Reason	Business Area Supported and Project Names (address APD and Framework)	Cost Estimate	Funding Code (deptid, PAC, etc.)	Justification for Procurement	DUA Required? ***	For PCS Use Proposed Procurement Method
1	Avaya SA Preferred and Upgrade Advantage	Affiliated Telephone e, Inc.	Meets SSA Service Delivery Standards for phone availability	9/1/2019	DDS	137,723.66	PDDSI	Continued maintenance of the phone system	No	
2	Avaya Data	Affiliated Telephone e, Inc.	Meets SSA Service Delivery Standards for phone availability	9/1/2019	DDS	3,250.00	PDDSI	Continued maintenance of the phone system	No	
3	Syn-Apps	Affiliated Telephone e, Inc.	Meets SSA Service Delivery Standards for phone availability	9/1/2019	DDS	10,400.00	PDDSI	Continued maintenance of the phone system	No	
4	Verasmart call accounting	Affiliated Telephone e, Inc.	Meets SSA Service Delivery Standards for phone availability	9/1/2019	DDS	1,500.00	PDDSI	Continued maintenance of the phone system	No	
5	IQ Certificate	Affiliated Telephone e, Inc.	Meets SSA Service Delivery Standards for phone availability	9/1/2019	DDS	399.00	PDDSI	Continued maintenance of the phone system	No	
6	Affiliated Labor	Affiliated Telephone e, Inc.	Meets SSA Service Delivery	9/1/2019	DDS	30,000.00	PDDSI	Continued maintenance of the phone system	No	



**Table 2 - Waiver Requests**

7	"As needed" for items not covered under the contract	Affiliated Telephone, Inc.	Standards for phone availability Meets SSA Service Delivery Standards for phone availability	9/1/2019	DDS	15,000.00	PDDS1	Contingency to cover additional costs that the maintenance agreement does not cover	No		
8											
9											
10											
11											
12											
					<b>TOTAL</b>	<b>\$198,272.66</b>					

## Certificate Of Completion

Envelope Id: 895A5729328540C2A02999037006030B	Status: Completed
Subject: New \$1,207,635; HHS000660600001; Affiliated Telephone Inc; HHSC/AES/FCO/DDS	
Source Envelope:	
Document Pages: 273	Signatures: 1
Certificate Pages: 3	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Texas Health and Human Services Commission
Time Zone: (UTC-06:00) Central Time (US & Canada)	1100 W. 49th St.
	Austin, TX 78756
	PCS_DocuSign@hhsc.state.tx.us
	IP Address: 167.137.1.16

## Record Tracking

Status: Original	Holder: Texas Health and Human Services	Location: DocuSign
10/21/2019 8:21:44 AM	Commission	
	PCS_DocuSign@hhsc.state.tx.us	

## Signer Events

Signer Events	Signature	Timestamp
Trey Wood tre.y.wood@hhsc.state.tx.us Chief Financial Officer Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 167.137.1.9	Sent: 10/21/2019 8:34:49 AM Resent: 10/22/2019 8:24:25 AM Viewed: 10/22/2019 8:43:35 AM Signed: 10/22/2019 3:25:56 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Andy Marker Edward.Marker@hhsc.state.tx.us Texas Health and Human Services Commission Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 167.137.1.11	Sent: 10/22/2019 3:26:15 PM Viewed: 10/22/2019 4:19:44 PM Signed: 10/22/2019 4:19:49 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Karen Ray Karen.Ray@hhsc.state.tx.us Chief Counsel HHSC Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 167.137.1.11	Sent: 10/22/2019 4:20:05 PM Viewed: 10/23/2019 4:06:42 PM Signed: 10/23/2019 4:06:49 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Wayne Salter wayne.salter@hhsc.state.tx.us AES Deputy Executive Commissioner Texas Health and Human Services Commission Security Level: Email, Account Authentication (None)	  Signature Adoption: Pre-selected Style Using IP Address: 167.137.1.9	Sent: 10/23/2019 4:07:05 PM Resent: 10/24/2019 3:53:36 PM Viewed: 10/25/2019 6:25:48 PM Signed: 10/25/2019 6:25:53 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

## In Person Signer Events

In Person Signer Events	Signature	Timestamp
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## Editor Delivery Events

Editor Delivery Events	Status	Timestamp
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## Agent Delivery Events

Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
<b>Certified Delivery Events</b> AES Contract Operations Routing AES_Contract_Operations_Routing@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 10/21/2019 8:34:48 AM
Mike D. Parks michael.parks2@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 10/21/2019 8:34:48 AM Viewed: 10/25/2019 6:36:49 PM
Mark Cooper Mark.Cooper@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 10/21/2019 8:34:47 AM
Reynaldo Velazquez reynaldo.velazquez@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 10/21/2019 8:34:48 AM
HHSC FS Budget Contracts FS_BudgetContracts@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 10/21/2019 8:34:49 AM
Executive Clerk HHSExecutiveClerk@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 10/23/2019 4:07:05 PM
Steve Springfield sspringfield@aff-com.com Enterprise Account Rep. Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 10/25/2019 6:26:08 PM
Jim Carter jcarter@affiliatedcom.com VP affiliated telephone inc Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b>	<b>COPIED</b>	Sent: 10/25/2019 6:26:08 PM

<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
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Not Offered via DocuSign

<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
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<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
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<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
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Envelope Sent	Hashed/Encrypted	10/25/2019 6:26:09 PM
Certified Delivered	Security Checked	10/25/2019 6:26:09 PM
Signing Complete	Security Checked	10/25/2019 6:26:09 PM
Completed	Security Checked	10/25/2019 6:26:09 PM

<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
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