

**INTERAGENCY CONTRACT
BETWEEN
THE DEPARTMENT OF INFORMATION RESOURCES
AND
TEXAS EDUCATION AGENCY
RELATING TO THE CONSOLIDATION OF DATA CENTER SERVICES
PURSUANT TO THE MASTER SERVICES AGREEMENTS BETWEEN THE
DEPARTMENT OF INFORMATION RESOURCES
AND
THE MULTISOURCING SERVICES INTEGRATOR AND SERVICE
COMPONENT PROVIDERS
DIR CONTRACTS NOS. DIR-DCS-MSI-MSA-001, DIR-DCS-SCP-MSA-002,
AND DIR-DCS-SCP-MSA-003 – DATA CENTER SERVICES**

This Interagency Contract ("IAC" or "Contract") is entered into by the state agencies shown below as contracting parties (referred to individually as a "Party" and collectively as the "Parties") pursuant to the provisions of the Interagency Cooperation Act, Chapter 771, Texas Government Code. This IAC is created to give effect to the intent and purpose of Subchapter L, Chapter 2054, Texas Government Code, concerning statewide technology centers, specifically including Section 2054.386(b), Texas Government Code, which requires each state agency selected to receive services or to have operations performed through a statewide technology center to enter into an interagency contract with the Department of Information Resources (hereafter referred to as the "Performing Agency" or "DIR").

This Contract is consistent with the terms in DIR Contracts Nos. DIR-DCS-MSI-MSA-001 between DIR and Capgemini America, Inc., DIR-DCS-SCP-MSA-002 between DIR and Xerox State & Local Services, Inc., and DIR-DCS-SCP-MSA-003 between DIR and Xerox Corporation. The DIR contracts are hereinafter referred to collectively as the "Data Center Services Contracts." The service delivery model set forth in the Data Center Services Contracts provides for a Multisourcing Service Integrator (MSI) Service Provider and various Service Component Providers, which will hereinafter be referred to as the "Service Providers". The state agency receiving services under the Data Center Services contracts through this IAC is hereinafter referred to as the "Receiving Agency" or the "DIR Customer."

SECTION I CONTRACTING PARTIES

RECEIVING AGENCY: Texas Education Agency

PERFORMING AGENCY: Department of Information Resources

SECTION II STATEMENT OF SERVICES TO BE PERFORMED

1. EFFECT OF IAC

Data center and disaster recovery services are required by Section 2054.382, Texas Government Code, to be managed by DIR for two or more state agencies under a rule that describes such data and disaster recovery services. DIR has described such Services at 1 Texas Administrative Code, Chapter 215, and they are further described in the Data Center Services Contracts. Receiving Agency has been prioritized by DIR to receive data center and disaster recovery services, and this IAC is entered into to describe the Services to be provided and the responsibilities of each Party relating thereto. Capitalized terms not defined herein shall have the same meanings as set forth in the Data Center Services Contracts.

This IAC describes the rights and responsibilities of the Parties relating to specific implementation, operation, maintenance, use, payment and other associated issues by and between DIR Customer and DIR related to the Services to be provided under the Data Center Services Contracts.

Pursuant to the First Amendment to the Data Center Services Contracts, Interim, Walk In Take Over (WITO) services will commence on May 1, 2012 at 12:00:00 a.m. Central Time and terminate on June 30, 2012 ("WITO Period"). The Services provided under the Data Center Services Contracts will commence on July 1, 2012 at 12:00:00 a.m. Central Time ("the Commencement Date").

2. SERVICES PROVIDED AND RELATED EQUIPMENT, SOFTWARE AND FACILITIES

Unless otherwise referenced herein, the references to Exhibits and Attachments herein are references to Exhibits and Attachments of the Data Center Services Contracts where specific requirements of an individual DIR Customer may be identified. Assets covered within the Services outlined in the Data Center Services Contracts are included in the Exhibits and Attachments. Omission of assets from the Exhibits and Attachments to the Data Center Services Contracts does not imply exemption from Services.

Service Providers are required to conduct an initial wall to wall complete inventory of all Equipment, Software, and related services provided or supported by the Service Providers and deployed at DIR and DIR Customers Sites or Service Provider locations. This initial inventory will include all IT assets, whether such assets are owned or leased by DIR, DIR Customers, or the Service Providers. In addition, the Service Providers are required to maintain this inventory record on an on-going basis throughout the term of the Data Center Services Contracts.

2.1 Services, Service Levels and Implementation

During the WITO Period, Service Providers shall provide essential data center services as described in **Attachment 1**, Statement of Work to the First Amendment to the Data Center Services Contracts. During this period, DIR and the DIR Customers, with the assistance of the new Service Providers, will phase out the services of the previous Service Provider. On July 1, 2012, DIR Customers shall receive the Services described in the Data Center Services Contracts, subject to the terms of this IAC and the Data Center Services Contracts. **Attachment 3-A**, Service Levels Matrix, shall serve as the minimum required Service Levels beginning July 1, 2012.

Service Providers shall perform the Transition and Transformation Services, including completion of milestones and provision of the deliverables described in the Transition Plan and Transformation Plan. DIR and DIR Customer shall perform the tasks and provide the resources for which they are respectively responsible under the Transition Plan and Transformation Plan, but neither DIR nor DIR customer shall be obligated to perform tasks or provide any resource beyond those set forth in such Transition Plan or Transformation Plan. If DIR Customer fails to perform such required tasks or provide such required resources, DIR Customer shall be financially responsible for DIR's additional costs reasonably incurred as a direct result of such failure. If DIR knows that DIR Customer has failed to perform such required tasks or provide such required resources, DIR will use reasonable efforts to notify DIR Customer of the failure and will give DIR Customer a reasonable opportunity to cure such failure. The cure period will necessarily be shorter than the cure period provided by Service Providers to DIR under **Section 4.2** and **Section 4.3** of the Data Center Services Contracts. In all events, Service Providers shall use commercially reasonable efforts to minimize such costs.

2.2 DIR Customer Equipment

At the start of the WITO Period, Service Providers will assume responsibility for operation, maintenance and management of the DIR Customer owned and leased Equipment ("DIR Customer Equipment") identified in **Exhibit 10**, Equipment Assets, and will abide by all federal and state laws, rules, regulations and guidelines concerning appropriate use thereof. Any use by Service

Providers of DIR Customer Equipment shall be limited to the purpose of fulfilling the requirements of this IAC or the Data Center Services Contracts. If required under federal law, DIR Customer Equipment shall be used only for purposes authorized under federal law. DIR Customer will retain ownership of DIR Customer Equipment and will not be required to acquire additional Equipment at refresh of such Equipment. For purpose of this IAC, refresh is deemed to be the point in time that DIR and Service Providers determine that the DIR Customer Equipment shall be replaced pursuant to the refresh life cycle terms set out in the Data Center Services Contracts. Upon refresh, Service Providers are responsible for providing the replacement Equipment, and DIR Customer is responsible for the disposal and/or surplus of decommissioned DIR Customer Equipment in accordance with applicable state and federal law and rules. Unless otherwise agreed by the Parties, all replacement Equipment shall be owned by DIR or Service Providers.

DIR Customer acknowledges and agrees that the DIR Customer Equipment may be relocated during the term of this IAC in accordance with the terms of the Data Center Services Contracts.

2.3 DIR Customer Contracts and Leases with Third Parties

DIR Customer will make available for use or use its best efforts to cause to be made available for use by DIR and Service Providers the DIR Customer Contracts and Leases that pertain to the Data Center Services set forth in **Attachment 12-B**, Third Party Service Contracts and **Attachment 12-C**, Third Party Equipment Contracts. Any use by Service Providers of DIR Customer Third Party Contracts and Leases shall be limited to fulfilling the requirements of this IAC or the Data Center Services Contracts. If required under federal law, the DIR Customer Third Party Contracts and Leases shall be used only for the purposes authorized under federal law.

Service Providers shall obtain all Required Consents in accordance with **Article 5** of the Data Center Services Contracts. Except to the extent expressly provided otherwise in **Attachment 4-B**, Financial Responsibility Matrix, Service Providers shall pay all transfer, re-licensing, termination charges and other costs or expenses associated with obtaining any Required Consents or obtaining any licenses or agreements as to which Service Providers are unable to obtain such Required Consents. If requested by DIR, DIR Customer shall cooperate with Service Providers in obtaining the Required Consents by executing appropriate DIR approved written communications and other documents prepared or provided by Service Providers.

In accordance with the Transition Plan, the Service Providers are responsible for documenting the disposition of each Third Party Contract including identifying any DIR Customer Third Party Contracts and Leases that will not be transferred and that will remain a DIR Customer responsibility.

2.4 DIR Customer-Licensed Third Party Software

DIR Customer will make available for use or use its best efforts to cause to be made available for use, by DIR and Service Providers, the DIR Customer third party software ("DIR Customer-Licensed Third Party Software") set forth in **Attachment 12-A**, Third Party Software. Any use by Service Providers of DIR Customer-Licensed Third Party Software shall be limited to use for the purpose of fulfilling the requirements of this IAC or the Data Center Services Contracts. If required under federal law, the DIR Customer-Licensed Third Party Software shall be used only for the purposes authorized under federal law.

DIR Customer will use its best efforts to assist Service Providers to obtain from each Third Party Software licensor the right to use the DIR Customer-Licensed Third Party Software for Services provided under the Data Center Services Contracts. Service Providers shall obtain all Required Consents in accordance with **Article 5** of the Data Center Services Contracts. Except to the extent expressly provided otherwise in **Attachment 4-B**, Financial Responsibility Matrix, Service Provider shall pay all transfer, re-licensing, termination charges and other costs or expenses associated with obtaining any Required Consents or obtaining any licenses or agreements as to which Service Providers are unable to obtain such Required Consents.

In accordance with the Transition Plan, the Service Providers are responsible for documenting the disposition of each Third Party Contract including identifying any third party software licenses that will not be transferred and that will remain a DIR Customer responsibility.

2.5 DIR Customer Facilities

DIR Customer will use its best efforts to make available for use or cause to be made available for use by DIR and Service Providers the DIR Customer Facilities set forth in **Attachment 7-A**, DIR Facilities. Service Providers shall be responsible for identifying in the Transformation Plan the facilities that will be required for on-going service delivery and shall be required to detail how the identified facilities will be used by the Service Providers in the performance of their obligations and in compliance with any applicable rules and/or regulations.

2.6 Change Orders and Change Control

In accordance with the Service Management Manual, DIR Customer will coordinate with Service Providers and DIR all requests to change Service volumes, Service Levels, order New Services, order project work, and other Service change requests as may arise from time to time. Service Providers will maintain information on the status of each request in accordance with the Data Center Services Contracts and the Service Management Manual developed thereunder.

2.7 Inventory Control

DIR shall coordinate financial accounting and control processes between DIR Customer and Service Providers and ensure inclusion of reasonable control and reporting mechanisms, including any control and reporting mechanisms specifically required by DIR Customer, in the Service Management Manual. Such procedures shall specifically recognize DIR Customer requirements for inventory control and accounting for state owned and leased equipment and facilities, including hardware, software, contracts, and other items of value that may be utilized by, or authorized for use under the direction and control of Service Providers.

SECTION III TERM AND TERMINATION OF CONTRACT

The term of this IAC shall commence on May 1, 2012 and shall terminate on the date of termination of the Data Center Services Contracts, unless earlier terminated or extended by mutual agreement of the Parties. The initial term of the Data Center Services Contracts terminates at 11:59:59 p.m., Central Time, August 31, 2020, unless terminated earlier. The Parties intend that the Services received and delivered under this IAC coincide with the terms of the Data Center Services Contracts and that the term of this IAC be coterminous with the Data Center Services Contracts.

During the term of this IAC, DIR and DIR Customer shall amend this IAC, in accordance with Section VII of the IAC, as necessary to incorporate changes resulting from amendments to the Data Center Services Contracts. DIR shall keep DIR Customer informed of and provide the opportunity to provide input to DIR concerning the need for such amendments through participation under Section VI of the IAC.

This IAC is contingent on the continued appropriation of sufficient funds to pay the amounts specified in Attachment A, Estimated Cost Amount, of this IAC for the Services provided hereunder, including, as applicable, the continued availability of sufficient federal funds for the purposes described in this IAC and the Data Center Services Contracts. Continuation of the IAC is also contingent on the continued statutory authority of the Parties to contract for the Services. If this IAC is terminated for any reason other than lack of sufficient funds, lack of statutory authority or material breach by DIR, DIR Customer shall pay DIR an amount sufficient to reimburse DIR for any termination charges and any termination assistance charges incurred under the Data Center Services Contracts and this IAC as a result of such termination by DIR Customer. Payment of such compensation by DIR Customer to DIR shall be a condition precedent to DIR Customer's termination. DIR Customer acknowledges that Section 2054.382, Texas Government Code, prohibits DIR Customer from

spending appropriated money to contract or issue purchase orders for data center and disaster recovery services, including maintenance, without DIR executive director approval of such expenditures.

DIR and DIR Customer acknowledge and agree that compliance with federal law and ongoing cooperation with federal authorities concerning the expenditure of federal funds in connection with the Data Center Services Contracts and this IAC are essential to the continued receipt of federal funds.

SECTION IV

BASIS FOR COMPUTING REIMBURSABLE COSTS AND PAYMENT FOR SERVICES

DIR shall electronically invoice DIR Customer for Services on a monthly basis. Each invoice shall include the applicable monthly charges for Services received from the Service Providers, the DIR recovery fees, and any Pass-Through Expenses incurred by DIR or Service Providers on behalf of DIR Customer in accordance with the Data Center Services Contracts or this IAC. An overview of the charges is included in Attachment B, Overview of Charges, of this IAC.

The DIR recovery fees shall be reviewed at least annually in accordance with the requirements for billed statewide central services as set forth in OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments and other applicable statutes, rules, regulations and guidelines.

DIR shall retain documentation for the DIR recovery fees. Each invoice shall include sufficient detail for DIR Customer to allocate costs to all federal and state programs in accordance with the relative benefits received and to make federal claims according to the federal cost plan of DIR Customer.

In order to allow DIR to meet the statutory payment requirements in Chapter 2251, Texas Government Code, DIR Customer shall make monthly payments by processing an Interagency Transaction Voucher within twenty (20) days following receipt of each invoice from DIR for all fund sources in the State Treasury. Payment from other fund sources must also be made within twenty (20) days. For purposes of determination of the payment due date, DIR and DIR Customer shall use the date when the invoice is electronically transmitted by DIR to DIR Customer and posted on the chargeback system along with reports that substantiate the service volumes and associated Charges. Although cash flow considerations require timely payments as required herein, the rights of DIR Customer and DIR to dispute charges shall be consistent with Texas law.

The MSI Service Provider is required to develop and maintain a chargeback system. DIR shall coordinate requirements and functionality for the chargeback system with DIR Customer needs and requirements under federal and state requirements for invoiced charges generated through the system. DIR Customer

shall utilize this chargeback system to link the designated measurable activity indicators (such as applications or print jobs) with the appropriate financial coding streams. DIR Customer shall update this information monthly, or at such other intervals as are necessary, to enable the MSI Service Provider to generate accurate invoices reflecting the appropriate distribution of costs as designated by DIR Customer.

DIR Customer is liable for all costs and expenses associated with providing Services under the IAC to the extent such costs and expenses have been incurred by DIR and such Services have been provided to DIR Customer. Except as allowed in Section 771.008, Texas Government Code, DIR Customer shall have no right to set off, withhold or otherwise reduce payment on an invoice. To ensure enforceability of payment obligations, DIR Customer consents to DIR presenting this IAC and all unpaid invoices to the Comptroller of Public Accounts for collection purposes, as set forth in Section 771.008, Texas Government Code. Provided, however, that such consent shall not constitute an agreement or stipulation that Services have been provided or that the invoices are correct. DIR Customer expressly retains all rights to which it is entitled under Section 771.008, Texas Government Code, in the event of a disagreement with DIR as to whether Services have been provided and accepted or an invoice contains an error.

If DIR Customer disputes an unpaid invoice, it shall present the billing dispute in writing directly to DIR within 4 invoice cycles after the date DIR Customer receives the invoice and reports that substantiate the service volumes and associated Charges from DIR. DIR Customer will provide to DIR all relevant documentation to justify the billing dispute. Unless such billing dispute reasonably appears unjustified to DIR, DIR shall dispute such unpaid charges with Service Providers in accordance with the requirements of Sections 2251.042 and 2251.051, Texas Government Code. If such billing dispute appears unjustified to DIR, then DIR shall advise DIR Customer in writing of DIR's findings.

DIR Customer retains the right to dispute a paid invoice and shall notify DIR of such dispute along with supporting documentation in a timely manner. DIR shall represent the DIR Customer concerns to the Service Providers in accordance with Service Management Manual.

Payment with funds contained in the State Treasury shall be made via USAS fund transfers. DIR Customer shall initiate the transfers. DIR shall provide all necessary USAS coding elements to DIR Customer. DIR Customer shall pay for Services received from appropriation items or accounts from which like expenditures normally would be paid for similar services or resources based upon vouchers payable to DIR.

SECTION V CONTRACT AMOUNT

In accordance with terms of the Data Center Services Contracts and this IAC, DIR Customer shall be responsible for and agrees to pay DIR the applicable monthly Charges for Services received from the Service Providers, the DIR recovery fees, and any Pass Through Expenses incurred by DIR or Service Providers on behalf of DIR Customer in accordance with the Data Center Services Contracts or this IAC. An overview of the charges is included in Attachment B, Overview of Charges, of this IAC. It is understood and agreed that amounts are subject to change depending upon Services required and further dependent upon legislative direction and appropriations available for such Services. Attachment A to this IAC supports the estimated cost amounts between DIR and DIR Customer and is hereby incorporated as part of this IAC. It is further agreed between the Parties that Attachment A to this IAC shall be reviewed and revised as necessary.

SECTION VI DIR CUSTOMER PARTICIPATION

Governance of the DCS program is based on an owner-operator approach in which DIR Customers perform the role of the operator which means they actively and directly work with DCS Service Providers to resolve local operational issues and participate in committees to address enterprise matters. Enterprise-level decisions and resolution of escalated DIR Customer-specific issues are carried out by standing governance committees, organized by subject area and comprised of representatives from DIR, DIR Customers, and Service Providers. DIR Customers are structured into partner groups that select representatives to participate in these committees. All Governance participants have an opportunity to review issues and provide input to their governance representative before a decision is made.

To comply with the terms of **Section 15.11**, Compliance with Laws, of the Data Center Services Contracts, DIR Customer shall notify DIR, in writing, of all DIR Customer-specific laws ("DIR Customer-Specific Laws"), other than Service Provider Laws, that pertain to any part of DIR Customer's business that is supported by Service Providers under the Data Center Services Contracts, and DIR will notify Service Providers, in writing, of such DIR Customer-Specific Laws. The Parties intend that such DIR Customer-Specific Laws will be identified and included in the portion of the Service Management Manual specific to DIR Customer. DIR Customer shall use commercially reasonable efforts to notify DIR, in writing, of any changes to DIR Customer-Specific Laws that may, in any

way, impact the performance, provision, receipt and use of Services under the Data Center Services Contracts. Immediately upon receipt of notice that any DIR Customer-Specific Laws have changed and in no event later than two business days from such receipt, DIR shall advise Service Providers, in writing, of such change and require that any changes to DIR Customer-Specific Laws are identified and included in the Service Management Manual. If necessary to facilitate DIR compliance with the requirements of **Section 15.11(e)** of the Data Center Services Contracts, DIR Customer shall provide written interpretation to DIR of any DIR Customer-Specific Law.

DIR Customer shall interface with Service Providers on the performance of “day-to-day” operations, including work practices requiring Service Provider and DIR Customer interaction, issues resolution, training, planning/coordination and “sign-off.” All issues should be resolved at the lowest level possible, using the following escalation path, when necessary. If DIR Customer is not able to resolve an issue directly with Service Provider staff, DIR customer escalates the issue to Service Provider management. If the issue cannot be resolved by Service Provider management, DIR Customer escalates to the MSI Service Provider. If the issue cannot be resolved by MSI service provider, DIR Customer escalates to DIR. If the issue cannot be resolved by DIR, DIR Customer escalates to the appropriate DCS governance committee. The details of these and other agreed processes and procedures will be contained in the Service Management Manual to be developed by Service Providers and approved by DIR with reasonable opportunity for input by DIR Customer on agency-specific procedures. The Data Center Services Contracts require the Service Providers to develop appropriately documented policies, processes and procedures and to provide training to DIR Customer personnel where required to ensure effective service interfaces, before approval and adoption in the Service Management Manual.

DIR Customer will be expected to support the following:

- (a) Software currency standards are established for the DCS environment through the owner operator governance model. DIR Customers will be engaged in approval of these standards and the development of technology roadmaps that employ these software currency standards. DIR Customers are expected to remediate applications in order to comply with the standards
- (b) Technology standards (e.g. server naming standards, reference hardware architectures, operating system platforms) are established through DCS governance. DIR Customers will adhere to these standards. Any exceptions will follow governance request processes.
- (c) Consolidated systems may require optimization for WAN communication. DIR Customers will remediate application functionality and design in order to perform optimally in a WAN environment.

- (d) DIR Customers will collaborate with Service Providers to establish and leverage standard, regular change windows to support changes to enterprise systems. These change windows will be constructed to support varying degrees of service impact, from planned down-time to no service impact. Standard enterprise changes during these windows may affect all systems in one or more of the consolidated data centers simultaneously.
- (e) DIR Customers will support the consolidation of commodity services into shared enterprise solutions that leverage common management and configuration practices delivered by the service providers. Examples of such commodity services are SMTP mail relay and DNS management.
- (f) DIR Customers will support and align with standard enterprise Service Responsibilities Matrixes and associated processes for obtaining an exception or making improvements to the standard enterprise Service Responsibility Matrixes.

SECTION VII MISCELLANEOUS PROVISIONS

Public Information Act Requests

Under Chapter 552, Texas Government Code (the Public Information Act), information held by Service Providers in connection with the Data Center Services Contracts is information collected, assembled and maintained for DIR. DIR shall respond to Public Information Act requests for Service Provider information. If DIR Customer receives a Public Information Act request for Service Provider information that DIR Customer possesses, DIR Customer shall respond to the request as it relates to the information held by DIR Customer. Responses to requests for confidential information shall be handled in accordance with the provisions of the Public Information Act relating to Attorney General Decisions. Neither Party is authorized to receive or respond to Public Information Act requests on behalf of the other.

Confidential Information

DIR shall require Service Providers to maintain the confidentiality of DIR Customer information to the same extent that DIR Customer is required to maintain the confidentiality of the information, and with the same degree of care Service Providers use to protect their own confidential information. DIR acknowledges and agrees that DIR Customer may be legally prohibited from disclosing or allowing access to certain confidential data in its possession to any third party, including DIR and Service Providers. The Service Management Manual shall document detailed confidentiality procedures, including the process

DIR Customer shall follow to identify confidential information it is legally prohibited from disclosing or allowing access to by DIR and Service Providers and including confidentiality procedures required that are specific to DIR Customer. **Article 13** of the Data Center Services Contracts sets forth the confidentiality obligations of Service Providers.

DIR Customer shall notify DIR, in writing, if it is a covered entity subject to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations at 45 Code of Federal Regulations Parts 160 and 164, that is required to enter into a business associate agreement with DIR or Service Providers. DIR Customer shall notify DIR, in writing, if DIR Customer receives Federal tax returns or return information. If DIR Customer receives federal tax returns or return information, then DIR Customer must comply with the requirement of IRS Publication 1075 and Exhibit 7 to IRS Publication 1075. DIR Customer shall notify DIR, in writing, of any other requirements it has specific to the provision of Services hereunder. In the event a DIR customer is subject to additional requirement as mentioned in this section, DIR shall require Service Providers to maintain the confidentiality of DIR Customer information in accordance with language included in Attachment C of this agreement. Such additional requirements as is included in Attachment C of this agreement shall be included in the portion of the Service Management Manual specific to DIR Customer.

Contact Information

Contact information for each Party is set forth below.

DIR Customer's Primary Contact

Name: Bill Parker
Address: 1701 N. Congress Ave., Austin TX 78701
Telephone / Fax: (512) 463-1753
Email: william.parker@tea.state.tx.us

DIR Customer's Billing Contact

Name: Patsy Vinklarek
Address: 1701 N. Congress Ave., Austin, TX 78701
Telephone / Fax: (512)463-6061, (512)463-9279
Email: patsy.vinklarek@tea.state.tx.us

DIR's Primary Contact

Name: Donna Clay
Address: 300 W. 15th Street, Suite 1300, Austin, TX 78701
Telephone/Fax: (512) 463-4057 (telephone) / (512) 463-5868 (fax)
Email: donna.clay@dir.texas.gov

DIR's Billing Contact

Name: Bob Hopper

Address: P. O. Box 13564, Austin, TX 78711-3564

Telephone / Fax: (512) 936-4271 (telephone) / (512) 463-3304 (fax)

Email: bob.hopper@dir.texas.gov

Binding Effect

The Parties hereto bind themselves to the faithful performance of their respective obligations under this IAC.

DIR Customer acknowledges and agrees it has no privity of contract with the Service Providers but is a third party beneficiary of the Data Center Services Contracts as set forth in **Section 21.19** thereof.

Amendments

This IAC may not be amended except by written document signed by the Parties hereto.

Conflicts between Agreements

If the terms of this Contract conflict with the terms of any other contract between the Parties, the most recent contract shall prevail.

Responsibilities of the Parties

The Parties shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Contract. The parties do not intend to create a joint venture. Each Party acknowledges it is not an agent, servant or employee of the other. Each Party is responsible for its own acts and deeds and for those of its agents, servants and employees. Notwithstanding the foregoing, DIR will cooperate with DIR Customer in all reasonable respects to resolve any issues pertaining to federal funding in connection with this IAC or the Data Center Services Contracts.

DIR and DIR Customer agree that Services contemplated in this IAC shall be governed by provisions in the Data Center Services Contracts regarding individual responsibilities of the parties, including Services provided by the Service Providers. In the event DIR Customer actions, failure to perform certain responsibilities, or request for Services result in financial costs to DIR, including interest accrued, those costs shall be the responsibility of DIR Customer. DIR and DIR Customer shall coordinate and plan for situations where conflicts, failure to perform or meet timely deadlines, or competition for resources may occur during the term of this contract. Unless otherwise specifically addressed, the

governance process for the Data Center Services Contracts shall be used for issue resolution between DIR Customers, DIR and DIR Service Providers.

Audit Rights of the State Auditor's Office

In accordance with Section 2262.003, Texas Government Code and other applicable law, the Parties acknowledge and agree that: (1) the state auditor, the Parties' internal auditors, and if applicable, the Office of Inspector General of DIR Customer or their designees may conduct audits or investigations of any entity receiving funds from the state directly under the Contract or the Data Center Services Contracts, or indirectly through a subcontract under the Data Center Services Contracts; (2) that the acceptance of funds directly through this Contract or indirectly through a subcontractor under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, the Parties' internal auditors, and if applicable, the Office of Inspector General of DIR Customer or their designees to conduct audits or investigations in connection with those funds; and (3) that the Parties shall provide such auditors or inspectors with access to any information considered relevant by such auditors or inspectors to their investigations or audits.

Signatory Warranty

Each signatory warrants requisite authority to execute the IAC on behalf of the agency represented.

SECTION IX CERTIFICATIONS

The undersigned Parties hereby certify that: (1) the matters specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government; (2) this IAC serves the interest of efficient and economical administration of State Government; and (3) the Services, supplies or materials in this IAC are not required by Section 21, Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

RECEIVING AGENCY further certifies that it has the authority to contract for the above Services pursuant to Subchapter L, Chapter 2054, Texas Government Code.

PERFORMING AGENCY further certifies that it has the authority to contract for the above Services pursuant to Subchapter L, Chapter 2054, Texas Government Code.

IN WITNESS WHEREOF, the Parties have signed this IAC effective on May 1, 2012.

RECEIVING AGENCY: TEXAS EDUCATION AGENCY

By: Shirley Beaulieu 5-25-12

Printed Name: Shirley Beaulieu

Title: Chief Financial Officer

PERFORMING AGENCY: DEPARTMENT OF INFORMATION RESOURCES

By: Carl Marsh 

Printed Name: Carl Marsh 

Title: Chief Operating Officer

Attachments to IAC

Attachment A Estimated Cost Amount

Attachment B Overview of Charges

Attachment C Additional Confidentially Requirements

Attachment A
Estimated Cost Amount

Below are the estimated not to exceed costs for Services received from the Service Providers. Costs, such as incremental network expenses, which are billed directly to or paid by the DIR Customer, are not included in these amounts.

For the period May 1, 2012 through August 31, 2012, the not to exceed amount is \$2,655,064.28.

For the period September 1, 2012 through August 31, 2013, the not to exceed amount is \$8,469,133.31.

Attachment B **Overview of Charges**

The following provides a summary of potential agency charges, for reference.

For the description of charges during the WITO Period, see **Attachment 2**, Pricing and Financial Provisions to the First Amendment to the Data Center Services Contracts. During the WITO period, DIR shall invoice DIR Customer for Print and Mail charges, Hardware Service Charges, Software Service Charges, Project Rate Card Charges, Interim Period Service Charge and any Pass-Through Expenses on an actual basis. Other resource units will be billed based on April 2012 resource unit volumes.

For the description of the Charges beginning on July 1, 2012 see **Exhibit 4**, Charges, of the Data Center Services Contracts. Charges will be based on each agency's technical environment and service mix (e.g., mainframe, server, print-mail); therefore, not all of the charges described below will apply to all agencies.

MSI and Service Component Provider Charges

MSI Base Charges

The agency base charge is calculated as follows:

enterprise chargeback unit rate x volumes

This Base Charge calculation applies to all Base Charges except those categorized under the Pass Through and Transition/Transformation Milestone Charges.

Attachment 4A provides an enterprise Base Charge for each Resource Baseline Category. The allocation of these Base Charges is included in the Service Component Providers chargeback unit rates and is based on the level of support required for the services being provided.

Service Component Provider Base Charges

The agency base charge is calculated as follows:

enterprise chargeback unit rate x volumes

This Base Charge calculation applies to all Base Charges except those categorized under the Mainframe Software Services Charges, Server Hardware Services Charges, Server Software Service Charges, Server Tier Matrix Maintenance – State-Owned Equipment, Pass Through and Transition/Transformation Milestone Charges.

Attachment 4A provides an enterprise Base Charge for each Resource Baseline Category (e.g., Mainframe CPU Hours, Consolidated and Non-Consolidated Service Tier Matrix Servers, Consolidated and Non-Consolidated Storage and Tape). The allocation of these Base Charges to an agency is based on the agency's volume of that Resource Unit as a percentage of the total volume.

The enterprise chargeback unit rate for each Resource Unit is determined by dividing the sum of the Base Charge and variable ARC (Additional Resource Charge) and RRC (Reduced Resource Credit) charges by the total volume.

Base Charges are based on a forecasted consumption pattern and include all of the required services and agreement provisions. ARCs and RRCs are designed to adjust Base Charges up or down as actual consumption deviates from forecasted consumption. The enterprise chargeback unit rate may vary based on enterprise activity.

Mainframe Software Services Charges (SSC)

The Mainframe SSC reflects the license and maintenance fees for software installed on Mainframes and categorized in the "Mainframe" tab of **Attachment 4-B**, Financial Responsibility Matrix, as "Mainframe non-IBM Software". The intent of the SSC is to provide the agencies the ability to procure software from Service Providers that is not built into the Base Charges (included in the "Infrastructure Stack" software). If the software is not paid as a One Time Charge (OTC), the Monthly Software Charge will equal the Software Expenditures x 1.025 divided by twelve (12).

Server Hardware Service Charge (HSC)

The Server HSC reflects the cost of application server hardware and hardware maintenance over a 60-month period. The HSC includes payments for hardware currently existing in the environment and hardware costs associated with transformation and refresh on Servers billed through the Service Tier Matrix.

Server Software Service Charge (SSC)

The Service SSC reflects the license and maintenance fees for software installed on Service Tier Matrix Servers and Utility Servers and categorized in the "Server Software" tab of **Attachment 4-B**, Financial Responsibility Matrix, as "DIR Customer Request". The intent of the SSC is to provide the agencies the ability to procure software from Service Providers that is not built into the Base Charges (included in the "Infrastructure Stack" software). If the software is not paid as a One Time Charge (OTC), the Monthly Software Charge will equal the Software Expenditures x 1.025 divided by twelve (12).

Server Tier Matrix Maintenance – State-Owned Equipment

The “Hardware Maintenance - DIR Customer-Owned STM Servers” line in **Attachment 4-A** indicates the amounts payable for maintenance performed in respect of Equipment installed in the DIR Customers’ Production Environments.

Pass Through

Pass Through includes costs for microfiche and the enterprise security assessment or any other item designated as a Pass Through. A 3% fee is added to the costs of all Pass Through items.

Transition/Transformation Milestone Charges

The Transition/Transformation Milestone Charges occur over the life of the Agreement and have been allocated to the agencies as follows:

- Mainframe: Allocated to agencies based on the relative size of their total current Mainframe spend profile.
- Server/Data Center/Network: Allocated to agencies based on the relative size of their total current Server spend profile.
- Print - Mail: Allocated to agencies based on their relative size of the total current Print – Mail spend profile.
- MSI: Allocated to agencies based on their relative size of their total current spend profile.

Other Applicable Charges

In addition to the charges described above, upon the agency’s request and DIR’s approval, the following additional charges may be invoiced by the Service Providers:

- Additional Project Pool Hours
- Optional Service Tier Matrix Services
- Optional Unisys Mainframe Services, Print-Mail Services and Server Services
- New Services that may be requested and priced in accordance with **Section 11.5** of the Service Provider Contracts
- MSI Special Implementation Projects
- Co-location Services

DIR Recovery Fees

DIR Cost Recovery Fee

The estimated amount DIR will recover from the agencies to fund Data Center Services related expenditures for sourcing management.

Enterprise License Recovery Fee

The amount DIR will recover from the agencies to fund the enterprise licenses held by DIR on behalf of DIR Customers.

Other DIR Services

There may be other charges associated enterprise services offered by DIR. DIR will provide notice to DIR Customers prior to assessment of other charges.

Attachment C
Additional Confidentiality Requirements

Not required.



KAREN W. ROBINSON
Executive Director

— ♦ —
DIR BOARD OF
DIRECTORS

— ♦ —
CHARLES BACARISSE
Chair

RAMÓN F. BAEZ

ROSEMARY R.
MARTINEZ

RICHARD S. MOORE

P. KEITH MORROW

ROBERT E.
PICKERING, JR.

WANDA ROHM

LOUIS CARR, JR.
Ex Officio

BOWDEN HIGHT
Ex Officio

KAREN A. PHILLIPS
Ex Officio

RECEIVED

TEXAS DEPARTMENT OF INFORMATION RESOURCES

P.O. Box 13564 ♦ Austin, TX 78711-3564 ♦ www.dir.texas.gov

Tel: (512) 475-4700 ♦ Fax: (512) 475-4759

PURCHASING & CONTRACTS

June 14, 2012

Ms. Kay Wagner
Texas Education Agency
Contracts & Purchasing
1701 N. Congress Avenue
Room # 2-125
Austin, Texas 78701

Re: Interagency Contract No. DIR-DCS-IAC-017

Dear Ms. Wagner:

Enclosed is one executed original of the above referenced Interagency Contract between the Department of Information Resources and Texas Education Agency. If you have any questions, please contact me at (512) 463-8098 or via email at: linda.cline@dir.texas.gov

Sincerely,

Linda Cline

Linda Cline
Contract Manager

Enclosure

Texas Education Agency Purchase Order

Dispatch via Print

Payment Terms	Freight Terms	Ship Via	Purchase Order	Date	Revision	Page
30 Days	FOB Destination	Common	701-0000031234	05/01/2012		1
ALL TERMS AND CONDITIONS SET FORTH IN OUR SOLICITATION BECOME A PART OF THIS ORDER			Show the above PO Number and info below on all Packages and Papers			
VENDOR GUARANTEES MERCHANDISE DELIVERED ON THIS ORDER WILL MEET OR EXCEED SPECIFICATIONS IN THE SOLICITATION			Ship To: TEXAS EDUCATION AGENCY ATTN: CENTRAL REC., RM. G-102B 1701 N. CONGRESS AVE. AUSTIN TX 78701-1494 United States			

Vendor: 3313313313
DEPT OF INFORMATION RESOURCES
SOFTWARE DEPT
P O BOX 13564
AUSTIN TX 78711-3564

Bill To: TEXAS EDUCATION AGENCY
Att: Agency Accounting
1701 N. CONGRESS AVE.
AUSTIN TX 78701-1494
United States

Non-GSC PCC

Purchaser: Kay Wagner-514

Line-Sch	Inventory Item ID - Line Description	Class-Item	Quantity UOM	PO Price	Extended Amt	Due Date
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Tx Gov't Code Title 7, Ch 771, IAC Act. Accounting Policy Statement 014 - Interagency Payments and Receipts.

SB 1, 81st Leg.(AY10-11), or 82nd leg.(AY12-13), R.S. Art. IX, Sec. Sec. 8.03 - Interagency Reimbursements and Payments.

Texas Government Code, Subtitle D, Section 2155.140

1- 1	TEA Data Center Services 1st 25k	920-22	1.00 LOT	25,000.00	25,000.00	10/15/2012
	Contract ID: 000000000000000000002912	Contract Line: 0	Release: 1			
Item Total for Line				1	<u>25,000.00</u>	
2- 1	TEA Data Center Services	920-22	1.00 LOT	7,424,680.88	7,424,680.88	10/15/2012
	Contract ID: 000000000000000000002912	Contract Line: 0	Release: 2			
Item Total for Line				2	<u>7,424,680.88</u>	
3- 1	TCDD Data Center Services	920-22	1.00 LOT	16,637.53	16,637.53	10/15/2012
	Contract ID: 000000000000000000002912	Contract Line: 0	Release: 3			
Item Total for Line				3	<u>16,637.53</u>	
4- 1	FRINGE Data Center Services	920-22	1.00 LOT	13,000.00	13,000.00	10/15/2012
	Contract ID: 000000000000000000002912	Contract Line: 0	Release: 4			
Item Total for Line				4	<u>13,000.00</u>	

Current Period of Service: 05/01/2012 through August 31,2013

Original Contract Service Dates: 05/01/2012 through 08/31/2020

Total PO Amount

7,479,318.41

Texas Education Agency Purchase Order

Dispatch via Print

Payment Terms	Freight Terms	Ship Via	Purchase Order	Date	Revision	Page
30 Days	FOB Destination	Common	701-0000031234	05/01/2012		2
ALL TERMS AND CONDITIONS SET FORTH IN OUR SOLICITATION BECOME A PART OF THIS ORDER			Show the above PO Number and info below on all Packages and Papers			
VENDOR GUARANTEES MERCHANDISE DELIVERED ON THIS ORDER WILL MEET OR EXCEED SPECIFICATIONS IN THE SOLICITATION			Ship To: TEXAS EDUCATION AGENCY ATTN: CENTRAL REC., RM. G-102B 1701 N. CONGRESS AVE. AUSTIN TX 78701-1494 United States			

Vendor: 3313313313
DEPT OF INFORMATION RESOURCES
SOFTWARE DEPT
P O BOX 13564
AUSTIN TX 78711-3564

Bill To: TEXAS EDUCATION AGENCY
Att: Agency Accounting
1701 N. CONGRESS AVE.
AUSTIN TX 78701-1494
United States

Non-GSC PCC

Purchaser: Kay Wagner-514

Line-Sch	Inventory Item ID - Line Description	Class-Item	Quantity UOM	PO Price	Extended Amt	Due Date
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FAILURE TO DELIVER. If the contractor fails to deliver these supplies by the promised delivery date or a reasonable time thereafter, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, the state reserves the right to purchase specified supplies elsewhere, and charge the increase in price and cost of handling, if any, to the contractor. No substitutions nor cancellations permitted without prior approval of the Texas Education Agency. The State of Texas is exempt from all Federal Excise Taxes. STATE AND CITY SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described on this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

All shipments, shipping papers, invoices, and correspondence must be identified with our Purchase Order Number. Overshipments will not be accepted unless authorized by Buyer prior to shipment. By acceptance and fulfillment of this purchase order, the awarded vendor agrees that any payments due this vendor will be applied towards their debt with the State of Texas or any tax liabilities until paid in full.

TEXAS EDUCATION AGENCY

By:



Division of Purchasing and Contracts
Austin, Texas 78701-1494

PO Terms and Conditions

1. **AWARD OF CONTRACT:** A response to a TEA IFB or other solicitation is an offer to contract based upon the terms, conditions and specifications contained in the response. Bids or responses do not become contracts until they are accepted through a purchase order. The contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, Sections 2155.074, 2156.007 and 2157.003 shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.
2. **ACCEPTANCE OF PURCHASE ORDER:** Vendor's fulfillment of the Purchase Order (PO) constitutes Vendor's acceptance of the PO and its terms and conditions.
3. **NEW AND UNUSED:** Unless otherwise specified, items ordered shall be new and unused and of current production. Items shall be free from all material defects and shall conform to the requirements of its intended purpose.
4. **SUBSTITUTIONS:** No substitutions or cancellations are permitted without written approval of TEA's Purchasing and Contracts Division.
5. **TRANSPORTATION CHARGES:** F.O.B. Destination, Freight Prepaid and Allowed unless delivery terms are specified otherwise. If the quoted delivery terms do not include transportation costs, TEA shall reimburse Vendor for transportation costs in the amount specified in the Vendor's bid, or actual costs, whichever is lower. If transportation costs are based on actual costs, a copy of the freight bill showing actual charges for the shipment must be attached to the invoice. TEA shall have the right to designate what method of transportation to be used to ship the goods.
6. **TITLE AND RISK OF LOSS:** Title and risk of loss of the goods shall not pass to TEA until TEA actually receives and takes possession of the goods at the place of delivery referred to on the Purchase Order.
7. **DELIVERY:**
 - 7.1 Unless specified in bid, vendor is obligated to deliver order within 14 calendar days.
 - 7.2 Delivery shall be made during normal working hours only, unless prior approval has been obtained from TEA.
 - 7.3 Goods and materials shall be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to the vendor at no cost to TEA within three (3) business days of identifying the damage and notification of vendor.
 - 7.4 Partial shipments are not acceptable without prior approval from TEA's Purchasing and Contracts Division.
8. **ACCEPTANCE:** Receipt of goods and services does not constitute acceptance.
 - 8.1 "Acceptance" for goods means the point at which TEA accepts the goods in accordance with the terms set forth in the Purchase Order. The goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by TEA to the Vendor within a reasonable period of time, but not less than two (2) business days from the Delivery Date, or (ii) upon timely delivery of the goods identified herein to the shipping address specified on the face of the Purchase Order.
 - 8.2 "Acceptance" of services shall be based on attainment of performance in accordance with specifications and the purchase order.

By way of clarification, TEA hereby retains the right to reject any non-conforming goods or services and shall not be obligated to accept any non-conforming goods or services.
9. **IDENTIFICATION OF SHIPMENT:** Each shipment must be accompanied with a complete packing slip. Each package must be clearly marked with the TEA purchase order number and complete destination address.
10. **DELAY:** If a delay is foreseen, vendor shall give written notice to TEA. TEA has the right to extend delivery or service date if TEA determines, in its sole discretion, that the vendor has established valid reasons to justify the delay. Vendor shall keep TEA advised at all times of status of order. In the absence of TEA's written approval, the vendor's default or delay in promised delivery, failure to meet the promised service date, or failure to meet specifications authorizes TEA to purchase goods or services elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
11. **INSPECTION AND TESTS:**
 - 11.1 All goods will be subject to inspection and test by the TEA. Authorized TEA personnel shall have access to supplier's place of business for the purpose of inspecting merchandise.
 - 11.2 Samples, when requested, must be furnished at no cost to the TEA. Do not enclose or attach a sample unless the solicitation instructs you to do so. The TEA may perform test on samples submitted with the bid or on samples taken from regular shipment. If not destroyed in testing, they will be returned to the vendor on request, at bidder's expense. In the event samples tested fail to meet all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may, at the TEA's option, be returned to the vendor or held for disposition at vendor's risk and expense. Latent defects may result in revocation of acceptance.
12. **INVOICES:**
 - 12.1 Vendor shall submit one original copy of an itemized invoice showing the TEA purchase order number, description of each item, quantity, unit of measure and price of each item. Transportation costs shall be included in the invoice, if applicable, and a copy of the freight bill shall be included in transportation costs are based on actual cost. Vendor shall forward the invoice to the following address:

Texas Education Agency,
ATTN: Accounting Department,
1701 N. Congress Ave., Room 2-125
Austin, Texas 78701
 - 12.2 Vendor can email invoices to: teaaccountspayable@tea.state.tx.us
13. **PAYMENT:** Payments shall be made within 30 days from receipt and approval of a complete and correct invoice in accordance with the Prompt Payment Act provided in Texas Government Code, Title 10, Subtitle D, Section 2251
14. **TAXES:** TEA is exempt from the State Sales tax and Federal Excise tax. Do not include tax in your invoice. Excise Tax Exemption Certificates are available upon request.
15. **WARRANTIES:**
 - 15.1 **PRICE.** The prices to be paid by TEA shall be those contained in Vendor's bid or, if no bid, in Vendor's quotation, and Vendor warrants that such prices are valid for a minimum of 60 days from the date of the bid and are no higher than Vendor's current prices on orders by other purchasers for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. If Vendor breaches this warranty, the prices of the items shall be reduced to the Vendor's current prices on orders by other purchasers, or TEA may cancel this contract without liability to Vendor.
 - 15.2 **PRODUCT CONFORMANCE.** Vendor shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of TEA. Vendor warrants to the TEA that all goods and services furnished shall conform in all respects to the terms of this purchase order, including the specifications, any drawings, standards, and descriptions incorporated herein, and shall be free from any defects in materials, workmanship, and free from such defects in design. In the event of a conflict between the specifications, drawing, standards, and descriptions, the specifications shall govern. In addition, respondent warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended. Manufacturer's standard warranty shall apply unless otherwise specified.
 - 15.3 **SAFETY.** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA. Vendor warrants the goods conform to any standards promulgated by the U.S. Department of Labor under the Occupational Health and Safety Act of 1970 or other applicable standards.
 - 15.4 **PATENTS OR COPYRIGHTS.** The vendor agrees, at its expense, to indemnify, hold harmless and defend the TEA and the State of Texas from claims involving infringement of third parties' licenses, trademarks, copyrights, patents, or other intellectual property.
 - 15.5 **WARRANTY OF TITLE.** Vendor warrants that the title to all material, supplies and equipment furnished is free of liens and encumbrances.
16. **VENDOR PERFORMANCE:** All state agencies must report unsatisfactory vendor performance in accordance with Texas Government Code, §2155.074 and §2155.75. Vendor performance may be used as a factor in future awards.
 - 16.1 **FAILURE TO PERFORM:** If Vendor fails to comply with or perform any of its obligations under this Purchase Order, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Vendor until Vendor complies; the cancellation, termination, or suspension of the Purchase Order in whole or in part; and the seeking of other remedies as may be provided by this Purchase Order or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Vendor's receipt of written notice thereof from TEA.
 - 16.2 **CANCELLATION OF PO, ETC.:** If this Purchase Order or contract is cancelled, terminated, or suspended by TEA, the reasonable monetary value of services properly performed by Contractor pursuant to this Purchase Order prior to such cancellation, termination or suspension shall be determined by TEA and paid to Vendor as soon as reasonably possible. The cancellation date shall be the date the vendor is notified by TEA of such cancellation.
17. **FORCE MAJEURE:** The TEA may grant relief, for time of performance only, if the vendor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the vendor. The burden of proof for the need of such relief shall rest upon the vendor. To obtain relief based on force majeure, the vendor shall file a written request with the TEA describing the events, dates and effect of the events on vendor's ability to perform according to the purchase order.
18. **ASSIGNMENT OF PURCHASE ORDER OR CONTRACT:** PO or Contract may not be assigned, sold or transferred without the express written consent of the TEA Purchasing and Contracts Division. An attempted assignment after PO/Contract award without the TEA approval will constitute a material breach of contract.

- 19. FUNDING:** All purchase orders or contracts are contingent upon the continued availability of lawful appropriations by the Texas Legislature and is subject to cancellation or termination, without penalty or cost to TEA, if legislative action of any kind causes TEA not to have the authority, sufficient appropriated funds, or the need to continue or complete the contract.
- 20. DISPUTE RESOLUTION:** The dispute resolution process provided for TGC Chapter 2260 must be used by the TEA and the contractor to attempt to resolve all disputes arising under this contract.
- 21. RIGHT TO AUDIT:** Pursuant to § 2262.003 of the Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state, either directly under a contract or indirectly under a subcontract. Vendor understands that acceptance of funds under this contract or under a subcontract acts as acceptance of the authority of the state auditor's, or any successor agency, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. If subject to an audit or investigation, Vendor agrees to cooperate fully with the state auditor or its successor and to provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Vendor agrees to ensure that this provision concerning the state auditor's authority to audit or investigate subcontractors receiving funds indirectly through Vendor is included in any Vendor subcontract.
- 22. PUBLIC INFORMATION:** Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").
- 23. ANTI-TRUST:** Vendor hereby assigns to TEA any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq., (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).
- 24. AFFIRMATIONS:**
- 24.1 ANTITRUST LAWS:** The vendor affirms that it has not violated the antitrust laws of this state or the Federal Antitrust Laws (see section 23 above).
- 24.2 DECEPTIVE TRACE PRACTICES: UNFAIR BUSINESS PRACTICES:** The vendor affirms and warrants that it has not been the subject of allegations of deceptive trade practices violations under Business & Commerce Code Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the vendor has not been found to be liable for such practices in such proceedings.
- 24.3 FALSE STATEMENTS:** Submitting a bid with a false statement is a material breach of contract, and shall void the submitted bid or any resulting contracts, and may result in removal of the submitting vendor from the Centralized Master Bidders List.
- 24.4 GRATUITIES:** The vendor affirms that it 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 bid.
- 24.5 INELIGIBILITY UNDER FAMILY CODE:** Pursuant to Family Code Section 231.006(d), Family Code, re: child support, the vendor certifies that the individual or business entity named in this PO or contract is not ineligible to receive payments under this contract and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 24.6 CERTAIN BIDS AND CONTRACTS PROHIBITED:** Pursuant to Government Code Section 2155.004, the vendor affirms that it did not receive compensation for participation in the preparation of the specifications for this PO and certifies that the individual or business entity named in this PO or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated or payment withheld if this certification is inaccurate. The vendor also certifies that it did not collude with, nor receive any assistance from, any person who was paid by the TEA to prepare specifications or a solicitation on which a vendor's award was based and did not allow any person who prepared the respective specifications or solicitation to participate financially in any contract awarded.
- 24.7 DEBT TO THE STATE:** Vendor agrees that any payments due under this PO or 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.
- 24.8 PREFERENCE UNDER SERVICE CONTRACTS:** Vendor affirms that it will comply with Government Code 2155.4441, pertaining to the use of products produced in the State of Texas in the performance of services, to the extent that provisions applies.
- 24.9 INDEMNITY:** The contractor shall indemnify, hold harmless, and defend TEA and the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of these entities in the execution or performance of this contract.
- 24.10 EXCLUDED PARTIES LIST:** Vendor affirms that it and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity, and that vendor is in compliance with the State of Texas statutes and rules relating to procurement, and that vendor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>. Vendor also affirms that it has not been convicted of a felony in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Katrina or subsequent disasters.
- 25. TECHNOLOGY ACCESS CLAUSE:** The Vendor expressly acknowledges that state funds may not be expended in connection with the purchase of the following: telephones and other telecommunication product; information kiosks, transaction machines, internet websites, and multimedia resources unless the product(s) meets certain statutory requirements relating to accessibility by persons with disabilities in accordance with TAC §206 State Web Sites, TAC § 213 Electronic and Information Resources and the Federal 508 requirements. Accordingly, the vendor represents and warrants that the equipment provided for purchase is capable, either by virtue or features included within the technology or because it is readily adaptable by use with other technology, of:
1. Providing equivalent access for effective use by both visual and non visual means;
 2. Presenting information, including prompts used for interactive communications, in formats intended for both visual and non visual use, and
 3. Being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
- For purposes of this clause, 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 that would constitute reasonable accommodations under the Federal 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.
- 26. IRS WITHHOLDING:** Certain payments by some governmental entities to contractors after December 31, 2012 are subject to a 3% federal withholding requirement. The Internal Revenue Service (IRS) has proposed regulations regarding the 3% withholding requirement. Vendors should review this website for more information: <http://www.irs.gov/govtsig/article/0,,id=239542,00.html>. If TEA determines that any payments are due under this purchase order are subject to the 3% withholding requirement TEA shall withhold such amounts consistent with the statute. It is the Vendor's sole responsibility to assert and establish to the satisfaction of the TEA the availability of any applicable exemption from withholding.
- 27. FEDERAL RULES, LAWS, AND REGULATIONS:** Vendor shall be subject to and shall abide by all applicable federal laws, rules, and regulations, including, but not limited to:
- 27.1 Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
 - 27.2 Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
 - 27.3 Title IX of the Education Amendments of 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an education institution;
 - 27.4 Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105.
 - 27.5 The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;
 - 27.6 Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
 - 27.7 Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
 - 27.8 P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000; Educate America Act, P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
 - 27.9 General Education Provisions Act, as amended.
- 28. PREVAILING ORDER:** If there is a conflict or ambiguity between or among the terms of the documents that constitute a license, contract, or agreement and this purchase order, the terms of the license, contract, or agreement shall prevail over the terms of this purchase order.
- 29. PROHIBITION OF TEXT MESSAGING AND EMAILING:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately owned vehicle during official business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership On Reducing Text Messaging While Driving," effective October 1, 2009.