

Vendor Information

**Motorola Solutions,
Inc.**Vendor ID: **1361115800000**HUB Type: **Non HUB**RFO: **DIR-TSO-TMP-426**Contract Status: **Active****VENDOR CONTACT:**[Marty Saucedo](#)

Phone: (210) 237-2936

[Vendor Website](#)**DIR CONTACT:**[Jennifer Kim](#)

Phone: (512) 475-4834

Contract Overview

This contract offers Motorola branded products and related services. Customers can purchase directly through this DIR contract. Contracts may be used by state and local government, public education, other public entities in Texas, as well as public entities outside the state. • DIR has extended this Contract through July 22, 2024.

Contract Details & Ordering Information

Products & Services

[Commodity Codes](#)[Brands](#)[Contract Documents](#)[How to Order](#)[Resellers](#)

Products & Services

This contract offers the following products and services. Please contact the Vendor for the latest information.

Hardware

Software

Technical Services

MORE INFORMATION[Vendor Website](#)

Visit this Vendor's website to view the latest product, service, and pricing information.

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
MOTOROLA SOLUTIONS INC.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Motorola Solutions Inc. (“Vendor”), with its principal place of business at 500 West Monroe Street, Chicago, Illinois 60661.

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-SDD-TMP-426, on November 14, 2017, for Motorola Branded Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-426 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Communications Agreement; Appendix E, Service Terms and Conditions Agreement, Appendix F, Subscription Services Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-426, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-426, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with three (3) optional one-year renewal. Prior to expiration

of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Motorola branded products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to the technical services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

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

5. DIR Administrative Fee

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

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

6. Notification

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

If sent to the State:

Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources

300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Mike Fink
Motorola Solutions, Inc.
500 West Monroe Street
Chicago, Illinois 60661
Phone: (512) 937-3521
Email: mike.fink@motorolasolutions.com

7. Shrink/Click-wrap License Agreement, Communications System Agreement, Service Terms and Condition Agreement, and Subscription Services Agreement

A. Shrink/Click-wrap License Agreement

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

B. Communications System Agreement

Services provided under this Contract shall be in accordance with the Communications System Agreement as set forth in Appendix D of this Contract. No changes to the Communications System Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

C. Service Terms and Conditions Agreement

Services provided under this Contract shall be in accordance with the Service Terms and Conditions Agreement as set forth in Appendix E of this Contract. No changes to the Service Terms and Conditions Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Subscription Services Agreement

Services provided under this Contract shall be in accordance with the Subscription Services Agreement as set forth in Appendix F of this Contract. No changes to the

Subscription Services Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

E. Conflicting or Additional Terms

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

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

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

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

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

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

The foregoing requirements shall not be construed so as to negate Section 7.A concerning Shrink/Click Wrap License Agreements.

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

A. **Section 5, Intellectual Property Matter** is hereby restated in its entirety as follows:

This contract does not contemplate, authorize or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Motorola decide to authorize customized software or hardware products; then the intellectual property language applies.

B. **Section 8, Pricing, Purchase Orders, Invoices, and Payments, Subsection C. Customer Price, 3)** is hereby restated in its entirety as follows:

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers under this contract for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

C. **Section 9, Contract Administration, Subsection C. Records and Audit, 3)** is hereby restated in its entirety as follows:

3) Vendor and/or Order Fulfillers shall grant access to all applicable purchase orders and invoices and other documents directly related to the Contract and necessary to properly account for all payments made to Vendor, and Vendor's contract performance and compliance, pursuant to 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 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. Except as otherwise specified, each party will bear its own cost in the performance of the audit.

None of the foregoing shall in any way define or limit the rights, powers, or prerogatives of the State Auditor.

D. Section 10, Vendor Responsibilities, Subsection A. Indemnification, 2) ACTS OR OMISSIONS is hereby restated in its entirety as follows:

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.

E. Section 10, Vendor Responsibilities, Subsection A. Indemnification, 3) INFRINGEMENTS is hereby restated in its entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR and the CUSTOMER agree to furnish timely written notice to each other of any such claim. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. The defense shall be coordinated by VENDOR WITH THE Office of the Attorney General WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

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

service by Customer that is not in conformity with the terms of any applicable license agreement.

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

F. Section 10, Vendor Responsibilities, Subsection N. Required Insurance Coverage is hereby restated in its entirety as follows:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. 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. Motorola agrees to provide thirty (30) days written notice of termination or discontinuation of coverage. The minimum acceptable insurance provisions are as follows:

- 1) **Commercial General Liability**
Commercial General Liability must include a limit of \$2,000,000 per occurrence and \$2,000,000 general aggregate for coverage A, B, & C including products/completed operations. 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) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.
- 2) **Workers' Compensation Insurance**
Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy

limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 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) Additional Insured.

G. Section 11, Contract Enforcement, Subsection B. Termination, 1) Termination for Non-Appropriation, a) Termination for Non-Appropriation by Customer is hereby restated in its entirety as follows:

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) 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.

H. Section 11, Contract Enforcement, Subsection B. Termination, 3) Termination for Convenience is hereby restated in its entirety as follows:

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; however, Customer will be responsible for paying Motorola for any Equipment delivered or Services performed through the date of termination.

I. Section 11, Contract Enforcement, Subsection B. Termination, 4) Termination for Cause, b) Purchase Order is hereby restated in its entirety as follows:

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or

Vendor Contract No. _____

condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

(Remainder of page intentionally left blank)

Vendor Contract No. _____

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

MOTOROLA SOLUTIONS INC.

Authorized By: Signature on File

Name: Chris Lonnett

Title: Vice President, Government Sales-Central Region

Date: 4/24/2018

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 4/24/2018

Office of General Counsel: DB 4/24/2018



Department of Information Resources

Appendix A

Standard Contract Terms and Conditions

Cooperative Contracts

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

1 CONTRACT SCOPE

Successful Respondent shall provide the products and/or services specified in the Contract for purchase by Customers. Terms used in this document shall have the meanings set forth below in Section [3 Definitions](#).

2 NO QUANTITY GUARANTEES

The Contract is not exclusive to Successful Respondent. 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 products and/or services will be procured through the Contract.

3 DEFINITIONS

3.1 Compliance Check

An audit of Successful Respondent's compliance with the Contract which may be performed by a third-party auditor, DIR Internal Audit department, DIR contract management staff, or their designees.

3.2 Contract

The DIR Contract between DIR and Successful Respondent into which this Appendix A is incorporated.

3.3 CPA

Refers to the Texas Comptroller of Public Accounts.

3.4 Customer

Any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, a public safety entity, as defined by 47 U.S.C. Section 1401, or a county hospital, public hospital, or hospital district, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001:

- A. A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- B. A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- C. 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;

- D. 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;
- E. A local workforce development board created under Section 2308.253, Texas Government Code;
- F. A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- G. 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;
- H. A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- I. A nonprofit organization that provides affordable housing.

3.5 Business day

Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

3.6 DIR

Refers to the Texas Department of Information Resources.

3.7 Effective Date

Refers to the effective date of the Contract as set forth therein.

3.8 Invoice

Refers to a Customer approved instrument submitted by Successful Respondent for payment of services.

3.9 Purchase Order

Refers to Customer's fiscal form or format, contract with Successful Respondent, or other document used by Customer to authorize the purchase of products or services from Successful Respondent under the Contract, including but not limited to a formal written purchase order, procurement card, electronic purchase order, or another authorized instrument.

3.10 State

Refers to the State of Texas.

3.11 Statement of Work (SOW)

Means a document entered into between Customer and Successful Respondent describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Successful Respondent is to provide Customer, issued pursuant to the Contract.

3.12 Subcontracting Plan

Refers to **Appendix B**, Successful Respondent's Historically Underutilized Business Subcontracting Plan.

3.13 Successful Respondent

Refers to the party identified as either "Successful Respondent" or "Vendor" in Section 1.1 of the Contract.

3.14 Third-Party Provider

Refers to an agent, affiliate, subcontractor, vendor, reseller, manufacturer, publisher, distributor, order fulfiller or other person or entity designated or directed by Successful Respondent to provide products or services to a Customer in performance of, related to, or in support of a Purchase Order issued under the Contract.

4 GENERAL PROVISIONS

4.1 Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and Successful Respondent. 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.

4.2 Modification of Contract Terms and/or Amendments

- A. 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 Successful Respondent.
- B. DIR may amend the Contract upon thirty (30) calendar days written notice to Successful Respondent without the need for Successful Respondent's written consent: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.
- C. 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 Successful Respondent 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.
- D. Customer(s) and Successful Respondent 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.

4.3 Invalid Term or Condition

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

jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

4.4 Assignment

- A. DIR may assign the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- B. A Customer may assign a Purchase Order issued under the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.
- C. Successful Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the DIR. Any attempted assignment in violation of this provision is void and without effect.

4.5 Survival

All applicable Statements of Work that were entered into between Successful Respondent 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 Successful Respondent 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 three (3) years. In all instances of termination or expiration and no later than five (5) days after termination or expiration or upon DIR request, Successful Respondent shall provide a list, in accordance with the format requested by DIR (i.e., Excel, Word, etc.), of all surviving Statements of Work and Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Statements of Work and Purchase Orders. Rights and obligations under the 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.

4.6 Choice of Law

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. In any litigation where any state agency is a party, and subject to the requirements of Chapter 2260, Texas Government Code, the exclusive venue of any such suit arising under the Contract is fixed in the state courts of Travis County, Texas. If litigation does not involve any state agency, then venue is fixed in the state courts of the Texas county where the Customer is primarily situated, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency. Regardless of any provision anywhere in the Contract, no state agency or other Customer in any manner waives any defense or immunity whatsoever.

4.7 Limitation of Authority

Successful Respondent 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 the Contract; no other authority,

power or use is granted or implied. Successful Respondent may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

4.8 Proof of Financial Stability

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

4.9 Data Location

Regardless of any other provision of the Contract or its incorporated or referenced documents, all of the data for State of Texas Customers shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise; however, Successful Respondent shall notify DIR promptly after such request is made. For all Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. **NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE CONTIGUOUS US-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.**

4.10 Independent Contractor

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

5 INTELLECTUAL PROPERTY MATTERS

5.1 Intellectual Property Matters Definitions

5.1.1 "Work Product"

Means any and all deliverables produced by Successful Respondent for Customer under a Statement of Work issued pursuant to the 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, 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, configurations, 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 the Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit:
 - a. by any Successful Respondent personnel or Customer personnel, or
 - b. any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5.1.2 "Intellectual Property Rights"

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights, 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.

5.1.3 "Third Party IP"

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Order or Statement of Work issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract or a Purchase Order or Statement of Work issued under the Contract.

5.1.4 "Successful Respondent IP"

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Successful Respondent:

- i) 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

- ii) after the Effective Date if such tangible or intangible items or things were independently developed by Successful Respondent outside Successful Respondent'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 Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5.2 Ownership

As between Successful Respondent and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Successful Respondent. Successful Respondent 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, Successful Respondent 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. Successful Respondent acknowledges that Successful Respondent and Customer do not intend Successful Respondent 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 Successful Respondent, to all Successful Respondent materials, premises, and computer files containing the Work Product. Successful Respondent 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 Successful Respondent.

5.3 Further Actions

Successful Respondent, 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 Successful Respondent's signature due to the dissolution of Successful Respondent or Successful Respondent'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, Successful Respondent hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Successful Respondent's agent and Successful Respondent's attorney-in-fact to act for and in Successful Respondent'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 Successful Respondent, provided however that no such grant of right to Customer is applicable if Successful Respondent fails to execute any document due to a good faith dispute by Successful Respondent 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 Successful Respondent 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.

5.4 Waiver of Moral Rights

Successful Respondent hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Successful Respondent may now have or which may accrue to Successful Respondent'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. Successful Respondent 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.

5.5 Confidentiality

All documents, information and materials forwarded to Successful Respondent 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 Successful Respondent under Section [5.8 Successful Respondent License to Use](#). Hereunder, Successful Respondent 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.

5.6 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, Successful Respondent acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

5.7 Return of Materials Pertaining to Work Product

Upon the request of Customer, but in any event upon termination or expiration of the Contract, or a Statement of Work, Successful Respondent 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 Successful Respondent or furnished by Customer to Successful Respondent, 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 Successful Respondent by Customer or by anyone else that pertain to the Work Product.

5.8 Successful Respondent License to Use

Customer hereby grants to Successful Respondent 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 Successful Respondent 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.

5.9 Third-Party Underlying and Derivative Works

- A. To the extent that any Successful Respondent IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the services, Successful Respondent 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 Successful Respondent 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. Successful Respondent agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party IP.
- B. On request, Successful Respondent shall provide Customer with documentation indicating a third party's written approval for Successful Respondent to use any Third Party IP that may be embodied or reflected in the Work Product.

5.10 Agreement with Third Party Providers

Successful Respondent 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 Third Party Providers, prior to their providing such services or Work Product pursuant to the Contract, and that Successful Respondent shall maintain such written agreements at all times during performance of the Contract, which are sufficient to support all performance and grants of rights by Successful Respondent. Copies of such agreements shall be provided to the Customer promptly upon request.

5.11 License to Customer

Successful Respondent grants to Customer, at no additional charge, a world-wide, non-exclusive, perpetual, irrevocable, royalty free right and 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 Successful Respondent 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 Successful Respondent IP remain in Successful Respondent.

5.12 Successful Respondent Development Rights

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in the Contract shall preclude Successful Respondent 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 Successful Respondent 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, Successful Respondent and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6 TERMS AND CONDITIONS APPLICABLE TO STATE AGENCY PURCHASES ONLY

- A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes 1 TAC 206, 1 TAC 213, and in the Worldwide Web Consortium WCAG 2.0 AA technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations. Successful Respondent hereby represents, certifies, and warrants that it and its products and services comply with all relevant accessibility laws and standards.
 - i) Upon request, and prior to a DIR Customer purchase, Successful Respondent must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such completed ACRs already exist, and there have been no changes to the product/service since the time of the original document completion.
 - ii) If Successful Respondent claims that a proposed product or family of products is exempt from accessibility requirements, it must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.
 - iii) Upon request, and prior to a DIR customer purchase for IT development services, Successful Respondent must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Successful Respondent's capability or ability to produce accessible electronic and information resources.
 - iv) Additionally, Successful Respondent must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to

planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

- v) Upon request, and prior to a Customer purchase for COTS products, or IT development services, Successful Respondent must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.
- vi) Also upon request, Successful Respondent must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to: executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

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

- i) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined 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).
- ii) 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.
- iii) Successful Respondent agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Section.

7 CONTRACT FULFILLMENT AND PROMOTION

7.1 Service, Sales and Support of the Contract

Successful Respondent shall provide service, sales, and support resources to serve all Customers. It is the responsibility of Successful Respondent to sell, market, and promote products and services available under the Contract. Successful Respondent shall use best efforts to ensure that potential Customers are made aware of the existence of the Contract. All contracts for and sales to Customers for products and services available under the Contract shall be in accordance with the Contract.

7.2 Internet Access to Contract and Pricing Information

A. Successful Respondent Webpage

Within thirty (30) calendar days from the Effective Date, Successful Respondent will establish and maintain a webpage specific to the services awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Successful Respondent's website. Successful Respondent must use a web hosting service that provides a dedicated internet protocol (IP) address. Successful Respondent's website must have a Secure Sockets Layer (SSL) certificate and Customers must access Successful Respondent's website using Hyper Text Transfer Protocol Secure (HTTPS) and it will encrypt all communication between Customer browser and website. The webpage must include:

- i) a list with description of products and/or services awarded;
- ii) Successful Respondent contact information (name, telephone number and email address);
- iii) instructions for obtaining quotes and placing Purchase Orders;
- iv) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- v) a link to the DIR "Cooperative Contracts" webpage;
- vi) the DIR logo in accordance with the requirements of Section 7.9; and
- vii) any other information that the Contract indicates is required to be included on the webpage.

B. If Successful Respondent does not meet the webpage requirements listed above, DIR may cancel the Contract without penalty.

7.3 Accurate and Timely Contract Information

Successful Respondent 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. Successful Respondent, at its own expense, shall correct any non-conforming or inaccurate information posted at Successful Respondent's website within ten (10) business days after written notification by DIR.

7.4 Webpage Compliance Checks

Periodic Compliance Checks of the information posted for the Contract on Successful Respondent's website will be conducted by DIR. Upon request by DIR, Successful Respondent shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

7.5 Webpage Changes

Successful Respondent hereby consents to a link from the DIR website to Successful Respondent's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Successful Respondent with subsequent notice of link suspension, termination or removal. Successful Respondent 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.

7.6 Use of Access Data Prohibited

If Successful Respondent stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Successful Respondent 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 Successful Respondent shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

7.7 Responsibility for Content

Successful Respondent is solely responsible for administration, content, intellectual property rights, and all materials at Successful Respondent'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.

7.8 Services Warranty and Return Policies

Successful Respondent will adhere to Successful Respondent's then-currently published policies concerning product and service 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 products and services.

7.9 DIR and Customer Logos

Successful Respondent may use a Customer's logo only upon prior written approval of such Customer. Successful Respondent may use the DIR logo in the promotion of the Contract to Customers with the following stipulations:

- A. the logo may not be modified in any way,
- B. when displayed, the size of the DIR logo must be equal to or smaller than Successful Respondent's logo,
- C. the DIR logo is only used to communicate the availability of services under the Contract to Customers, and
- D. any other use of the DIR logo requires prior written permission from DIR.

7.10 Successful Respondent Logo

If DIR receives Successful Respondent's prior written approval, DIR may use Successful Respondent's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. Use of the logo may be on the DIR website or on printed materials. Any use of Successful Respondent'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 Successful Respondent's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Successful Respondent.

7.11 Trade Show Participation

At DIR's discretion, Successful Respondent may be required to participate in no more than two (2) DIR sponsored trade shows each calendar year. Successful Respondent understands and agrees that participation, at Successful Respondent's expense, includes providing a manned booth display or similar presence. DIR will provide four (4) months advance notice of any required participation. Successful Respondent 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 Successful Respondent's booth.

7.12 Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Successful Respondent will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include administrative requirements for reporting and administrative fee payments. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and Successful Respondent or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at the meeting.

7.13 Performance Review Meetings

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

7.14 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, Successful Respondent shall provide DIR with a detailed report of a representative sample of products or services sold under the Contract. The report shall contain: product or service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR Customers can procure the products or services.

8 PURCHASE ORDERS, INVOICES, AND PAYMENTS

8.1 Purchase Orders

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

8.2 Invoices

- A. Invoices shall be submitted by Successful Respondent directly to 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 Successful Respondent. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Successful Respondent will agree to acceptable terms.
- B. Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices, and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the products and services by the Customer.
- C. The DIR Administrative Fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

8.3 Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Successful Respondent. 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 Successful Respondent will agree to acceptable terms.

8.4 Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under the Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under the 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 Successful Respondent upon request.

8.5 Travel Expense Reimbursement

Pricing for services provided under the 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 the Contract. The DIR Administrative Fee 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.

9 CONTRACT ADMINISTRATION

9.1 Contract Managers

DIR and Successful Respondent will each provide a contract manager ("Contract Manager") to support the Contract (respectively, the "DIR Contract Manager" and "Successful Respondent Contract Manager"). Information regarding each Contract Manager will be posted on the internet website designated for the Contract. DIR reserves the right to require a change in Successful Respondent Contract Manager if Successful Respondent Contract Manager is not, in the sole opinion of DIR, adequately serving the needs of the State.

9.1.1 DIR Contract Manager

The DIR Contract Manager's duties include but are not limited to:

- A. monitoring compliance and management of the Contract,
- B. advising DIR of Successful Respondent's performance under the Contract, and
- C. periodic verification of pricing and monthly reports submitted by Successful Respondent.

9.1.2 Successful Respondent Contract Manager

Successful Respondent Contract Manager's duties shall include but are not limited to:

- A. supporting the marketing and management of the Contract,
- B. facilitating dispute resolution between Successful Respondent and Customers, and
- C. advising DIR of Successful Respondent's performance under the Contract.

9.2 Reporting and Administrative Fees

9.2.1 Reporting Responsibility

- A. Each month, Successful Respondent shall report all products and services purchased under the Contract. Successful Respondent shall file monthly reports to include monthly sales reports, subcontract reports, and pay the DIR 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 Successful Respondent's applicable Contract books. Successful Respondent will provide all required documentation at no cost.

9.2.2 Detailed Monthly Report

- A. Using the Vendor Sales Report (VSR) portal, Successful Respondent shall provide DIR with a monthly report in the format required by DIR detailing sales activity under the Contract for the previous month period. This included months in which there are no sales. Reports may be submitted between the first (1st) and the fifteenth (15th) of each month and are due no later than the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. Per transaction, the monthly report shall include, at a minimum, the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated DIR Administrative Fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to Successful Respondent for correction in accordance with this Section.
- B. Successful Respondent 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.

9.2.3 Historically Underutilized Businesses Subcontract Reports

- A. Successful Respondent shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- B. Reports shall be due in accordance with the CPA rules.

9.2.4 DIR Administrative Fee

- A. The DIR Administrative Fee shall be paid by Successful Respondent 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 monthly sales reports, close the sales period, and notify Successful Respondent of the amount of the DIR Administrative Fee no later than the fourteenth (14th) calendar day of the month following the date of the reported sale. Successful Respondent shall pay the amount of the DIR Administrative Fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Successful Respondent reports January sales no later than February 15th; DIR closes January sales and notifies Successful Respondent of the amount of the DIR Administrative Fee by March 14th; Successful Respondent submits payment of the DIR Administrative Fee for January sales by March 25th.
- B. DIR may change the amount of the DIR Administrative Fee upon thirty (30) calendar days written notice to Successful Respondent without the need for an amendment to the Contract.
- C. To preserve the DIR Administrative Fee in place at the time of the sale of product or service, the calculation of the DIR Administrative Fee is based on the Purchase Order date for each sale.
- D. Successful Respondent shall reference the Contract number, reporting period, and DIR Administrative Fee amount on any remittance instruments.

9.2.5 Accurate and Timely Submission of Reports

- A. Successful Respondent shall submit reports and DIR Administrative Fee payments accurately and timely in accordance with the due dates specified in this Section. Successful Respondent shall correct any inaccurate reports or DIR Administrative Fee payments within three (3) business days upon written notification by DIR. Successful Respondent shall deliver any late reports or late DIR Administrative Fee payments within three (3) business days upon written notification by DIR. If Successful Respondent is unable to correct inaccurate reports or DIR Administrative Fee payments or deliver late reports and DIR Administrative Fee payments within three (3) business days, Successful Respondent shall 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 Successful Respondent fail to correct inaccurate reports or cure the delay in timely and accurate delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right at DIR's expense to require an independent third-party audit of Successful Respondent's records as specified in [Section 9.3 Records and Audit](#). DIR will select the auditor (and all payments to auditor will require DIR approval).
- C. Failure to timely submit three (3) reports or DIR 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 Successful Respondent's Contract.

9.3 Records and Audit

- A. Acceptance of funds under the Contract by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Successful Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Successful Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Successful Respondent 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.
- B. Successful Respondent 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, whichever is later. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- C. Successful Respondent 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.
- D. Successful Respondent shall provide copies and printouts requested by DIR without charge. DIR shall use best efforts to provide Successful Respondent ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Successful Respondent's records. Successful Respondent's records, whether paper or electronic, shall be made available during regular office hours. Successful Respondent personnel familiar with Successful Respondent's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Successful Respondent shall provide adequate office space to DIR staff during the performance of Compliance Check. If Successful Respondent is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.

- E. For procuring State Agencies whose payments are processed by the CPA, the volume of payments made to Successful Respondent through the CPA and the administrative fee based thereon shall be presumed correct unless Successful Respondent can demonstrate to DIR's satisfaction that Successful Respondent's calculation of DIR's administrative fee is correct.

9.4 Contract Administration Notification

- A. Prior to execution of the Contract, Successful Respondent shall provide DIR with written notification of the following:
 - i) Successful Respondent Contract Manager's name and contact information,
 - ii) Successful Respondent sales representative name and contact information, and
 - iii) name and contact information of Successful Respondent personnel responsible for submitting reports and payment of DIR Administrative Fees.
- B. Upon execution of the Contract, DIR shall provide Successful Respondent with written notification of the DIR Contract Manager's name and contact information.

10 SUCCESSFUL RESPONDENT RESPONSIBILITIES

10.1 Indemnification

10.1.1 Indemnities by Successful Respondent

- A. Successful Respondent shall defend, indemnify, and hold harmless DIR, the State of Texas, and Customers, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, 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, resulting from, or related to:
 - i) any acts or omissions of Successful Respondent, its employees, or Third Party Providers in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
 - ii) 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 (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;
 - iii) any breach, disclosure, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Successful Respondent in connection with the Contract, including DIR data, Customer data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract; and
 - iv) tax liability, unemployment insurance or workers' compensation or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.
- B. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED

DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. FOR NON-STATE AGENCY CUSTOMERS, THE DEFENSE SHALL BE COORDINATED BY CUSTOMER'S LEGAL COUNSEL. SUCCESSFUL RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER AND TO DIR OF ANY SUCH CLAIM.

10.1.2 Infringements

If Successful Respondent becomes aware of an actual or potential claim of an Infringement, or Customer provides Successful Respondent with notice of an actual or potential claim of an Infringement, Successful Respondent may (or in the case of an injunction against Customer, shall), at Successful Respondent's sole expense: (i) procure for 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.

10.2 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 SUCCESSFUL RESPONDENT, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, SUCCESSFUL RESPONDENT 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 SUCCESSFUL RESPONDENT NINETY (90) CALENDAR DAYS AFTER THE DATE OF SUCCESSFUL RESPONDENT'S RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

10.3 Taxes/Worker's Compensation/Unemployment Insurance

Successful Respondent agrees and acknowledges that during the existence of the Contract, Successful Respondent shall be entirely responsible for the liability and payment of Successful Respondent's and its employees' taxes of whatever kind, arising out of the performances in the Contract. Successful Respondent agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. Successful Respondent agrees and acknowledges that Successful Respondent and its employees, representatives, agents, and subcontractors shall not be entitled to any state benefit or benefit of another governmental entity Customer. Customer, DIR, and/or the State shall not be liable to Successful Respondent, 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.

10.4 Successful Respondent Certifications

- A. Successful Respondent represents and warrants that, in accordance with Section 2155.005, Texas Government Code, neither Successful Respondent nor the firm, corporation, partnership, or institution represented by Successful Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Successful Respondent.
- B. Successful Respondent hereby certifies, represents, and warrants, on behalf of Successful Respondent that:
- i) it has 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) it is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under Section 231.006, Texas Family Code, and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
 - iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
 - iv) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;
 - v) under Section 2155.004, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
 - vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Successful Respondent, which if determined adversely to Successful Respondent, will have a material adverse effect on the ability to fulfill its obligations under the Contract;
 - vii) Successful Respondent 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, nor is Successful Respondent subject to any Federal Executive Orders issued banning certain entities or countries.
 - viii) as of the Effective Date, it is not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
 - ix) in the performance of the Contract, Successful Respondent shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Section 2155.4441, Texas Government Code;

- x) all equipment and materials to be used in fulfilling the requirements of the Contract are of high-quality and consistent with or better than applicable industry standards, if any. All works and services performed pursuant to the Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- xi) to the extent Successful Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Successful Respondent is otherwise owed under the Contract may be applied toward any debt Successful Respondent owes the State of Texas until the debt is paid in full;
- xii) it is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- xiii) 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 Successful Respondent will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify Successful Respondent 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, it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xv) it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Successful Respondent acknowledges the applicability of Section 2155.444 and Section 2155.4441, Texas Government Code, in fulfilling the terms of the Contract;
- xvi) Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Section 556.005 or Section 556.008, Texas Government Code;
- xvii) in accordance with Section 2271.002, Texas Government Code, by signature hereon, Successful Respondent does not boycott Israel and will not boycott Israel during the term of the Contract;
- xviii) in accordance with Section 2155.0061, Texas Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate;
- xix) in accordance with Section 2252.152, Texas Government Code, it is not identified on a list prepared and maintained under Section 2270.0201 (previously 806.051) or Section 2252.153, Texas Government Code;
- xx) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract;
- xxi) if Successful Respondent is required to make a verification pursuant to Section 2274.002, Texas Government Code, Successful Respondent verifies that it (A) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (B) will not discriminate during the term of the contract against a firearm entity or firearm trade association;

- xxii) under Section 161.0085, Texas Health and Safety Code, Successful Respondent is not ineligible to receive the Contract;
 - xxiii) if Successful Respondent is required to make a certification pursuant to Section 2274.0101, Texas Government Code, (A) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Respondent is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; (B) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Successful Respondent is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; and (C) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure;
 - xxiv) if the services to be provided under a Purchase Order include cloud computing services, Successful Respondent shall comply with the requirements of the Texas Risk and Authorization Management Program ("TX-RAMP"), as provided by 1 TAC §§ 202.27 and 202.77, and the TX-RAMP Program Manual ("Program Manual"). Successful Respondent shall maintain program compliance and certification throughout the term of such Purchase Order, including providing all quarterly and ongoing documentation required by the Program Manual and any other continuous monitoring documentation or artifacts required by the Customer issuing such Purchase Order. Upon request from DIR or the Customer issuing such Purchase Order, Successful Respondent shall provide all documents and information necessary to demonstrate Successful Respondent's compliance with TX-RAMP; and
 - xxv) all information provided by Successful Respondent is current, accurate, and complete.
- C. During the term of the Contract, Successful Respondent shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Successful Respondent covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations, and warranties and any changes thereto.
- D. In addition, Successful Respondent understands and agrees that if Successful Respondent responds to certain Customer pricing requests, then, in order to contract with the Customer, Successful Respondent 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).

10.5 Ability to Conduct Business in Texas

Successful Respondent shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas in accordance with Texas Business Organization Code, Title 1, Chapter 9. Upon request by DIR, Successful Respondent shall provide all

documents and other information necessary to establish Successful Respondent's authorization to do business in the State of Texas and the validity of Successful Respondent's existence under the laws of its state of organization.

10.6 Equal Opportunity Compliance

Successful Respondent 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 of Texas in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Successful Respondent 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 Successful Respondent under the Contract. If Successful Respondent is found to be not in compliance with these requirements during the term of the Contract, Successful Respondent agrees to take appropriate steps to correct these deficiencies. Upon request, Successful Respondent 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.

10.7 Use of Subcontractors

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

10.8 Responsibility for Actions

- A. Successful Respondent is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Successful Respondent nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- B. Successful Respondent, for itself and on behalf of its subcontractors, shall report to the DIR Contract Manager within five (5) business days any change to the information contained in the Certification Statement of **Exhibit A** of the RFO or Section [10.4, Successful Respondent Certifications](#) of this Appendix A to the Contract. Successful Respondent 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.

10.9 Confidentiality

- A. Successful Respondent acknowledges that DIR and Customers that are governmental bodies as defined by Section 552.003, Texas Government Code, are subject to the Texas Public Information Act. Successful Respondent 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.

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

10.10 Security of Premises, Equipment, Data and Personnel

- A. Successful Respondent or Third-Party Providers may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to a Customer. Successful Respondent and Third-Party Providers shall preserve the safety, security, and the integrity of such personnel, premises, equipment, and other property, including data, information, files, and materials belonging to Customer, in accordance with the instruction of Customer and to the degree in which Successful Respondent or such Third-Party Provider protects its own information. Successful Respondent shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by Successful Respondent or a Third-Party Provider. If Successful Respondent or Third-Party Provider fails to comply with Customer's security requirements, then Customer may immediately terminate the Purchase Order and related Service Agreement.
- B. If a Purchase Order is subject to Section 2054.138, Texas Government Code, Successful Respondent shall meet the security controls required by such Purchase Order, and shall periodically provide to the Customer evidence that Successful Respondent meets such required security controls.

10.11 Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of Successful Respondent's employees and Third-Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Successful Respondent conduct such background checks. Should any employee or Third-Party Provider of Successful Respondent 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 Third-Party Provider in question.

10.12 Limitation of Liability

- A. For any claim or cause of action arising under or related to the Contract, 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.
- B. Successful Respondent and a Customer may include in a Purchase Order a term limiting Successful Respondent's liability for damages in any claim or cause of action arising under or related to such Purchase Order; provided that any such term may not limit Successful Respondent's liability below two-times the total value of the Purchase Order. Such value includes all amounts paid and amounts to be paid over the life of the Purchase Order to Successful Respondent by such Customer as described in the Purchase Order.
- C. Notwithstanding the foregoing or anything to the contrary herein, any limitation of Successful Respondent's liability contained herein or in a Purchase Order 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 the 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.

10.13 Overcharges

Successful Respondent hereby assigns to DIR any and all of its claims for overcharges associated with the 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.

10.14 Prohibited Conduct

Successful Respondent represents and warrants that, to the best of its knowledge as of the date of this certification, neither Successful Respondent nor any subcontractor, firm, corporation, partnership, or institution represented by Successful Respondent, nor anyone acting for Successful Respondent or 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 RFO directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

10.15 Required Insurance Coverage

- A. As a condition of the Contract, Successful Respondent shall provide the listed insurance coverage within five (5) business days of execution of the Contract if Successful Respondent is awarded services which require that Successful Respondent's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, Successful Respondent shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to such Customer within five (5) business days following the execution of the Purchase Order. Successful Respondent 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. If Successful Respondent's services under the Contract will not require Successful Respondent to perform work on Customer premises, or to use vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Successful Respondent may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing the Certification of Off-Premise Customer Services in the form provided by DIR, which shall serve to meet the insurance requirements.
- B. All required insurance must be issued by companies that have an A rating and a minimum Financial Size Category Class of VII from AM 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 Successful Respondent thereunder. The minimum acceptable insurance provisions are as follows:

10.15.1 Commercial General Liability

Commercial General Liability must include \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Medical Expenses per person of \$5,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- A. Blanket contractual liability coverage for liability assumed under the Contract;
- B. Independent Contractor coverage;
- C. State of Texas, DIR, and Customer listed as an additional insured; and
- D. Waiver of Subrogation.

10.15.2 Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code) 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.

10.15.3 Business Automobile Liability Insurance

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

- A. Waiver of subrogation;
- B. Additional insured.

10.16 Use of State Property

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

10.17 Immigration

- A. Successful Respondent 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 the Contract.
- B. Pursuant to Chapter 673, Texas Government Code, Successful Respondent shall, as a condition of the Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- i) all persons 1) to whom the E-Verify system applies, and 2) who are hired by Successful Respondent during the term of the Contract to perform duties within Texas; and
 - ii) all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of the Contract and assigned by the subcontractor to perform work pursuant to the Contract.
- C. Successful Respondent shall require its subcontractors to comply with the requirements of this Section and Successful Respondent is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Successful Respondent and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

10.18 Public Disclosure

No public disclosures or news releases pertaining to the Contract shall be made by Successful Respondent without prior written approval of DIR.

10.19 Product and/or Services Substitutions

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

10.20 Secure Erasure of Hard Disk Managed Services Products and/or Services

Successful Respondent agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase, destroy, or render unreadable 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 Purchase Order for such products and/or services, in accordance with 1 TAC 202 or NIST 800-88.

10.21 Deceptive Trade Practices; Unfair Business Practices

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

10.22 Drug Free Workplace Policy

Successful Respondent 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 280, Subpart F182) 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.

10.23 Public Information

- A. Pursuant to Section 2252.907, Texas Government Code, Successful Respondent 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.
- B. Each State government entity should supplement the provision set forth in Section A, above, with the additional terms agreed upon by the parties regarding the specific format by which Successful Respondent is required to make the information accessible by the public.
- C. Successful Respondent represents and warrants that it will comply with the requirements of Section 552.372(a), Texas Government Code, where applicable. Except as provided by Section 552.374(c), Texas Government Code, the requirements of Subsection J, Chapter 552, Texas Government Code, may apply to the Contract or certain Purchase Orders, and Successful Respondent agrees that the Contract or such Purchase Orders can be terminated if Successful Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

10.24 Successful Respondent Reporting Requirements

Successful Respondent shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109, requiring computer technicians to report images of child pornography.

10.25 Cybersecurity Training

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Successful Respondent, or a subcontractor, officer, or employee of Successful Respondent, will have access to a state computer system or database, then Successful Respondent shall ensure that 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 or institution of higher education. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the Contract and during any renewal period. Successful Respondent shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

11 CONTRACT ENFORCEMENT

11.1 Enforcement of Contract and Dispute Resolution

- A. Successful Respondent 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, (iii) except as provided in Sec. 2251.051 Texas Government Code, Successful Respondent shall continue performance while the dispute is being resolved, and (iv) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- B. Disputes arising between a Customer and Successful Respondent shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with the above. DIR shall not be a party to any such dispute unless DIR, Customer, and Successful Respondent agree in writing.

- C. 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 \$25,000.00.

11.2 Termination

11.2.1 Termination for Non-Appropriation

11.2.1.1 Termination for Non-Appropriation by Customer

Customers 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, Successful Respondent will be provided ten (10) calendar days written notice of intent to terminate. In the event of such termination, Customer will not be in default or breach under the Purchase Order or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

11.2.1.2 Termination for Non-Appropriation by DIR

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

11.2.2 Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Successful Respondent 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) Successful Respondent 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) Successful Respondent is found by DIR to be ineligible to hold the Contract under Subsection (b) of Section 2155.006, Texas Government Code. Successful Respondent shall be provided written notice in accordance with Section 14.1, Notices, of intent to terminate.

11.2.3 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.

11.2.4 Termination for Cause

11.2.4.1 Contract

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

11.2.4.2 Purchase Order

Customer or Successful Respondent 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, 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 Successful Respondent fails to comply with confidentiality, privacy, security requirements, environmental, or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

11.2.5 Immediate Termination or Suspension

DIR may immediately suspend or terminate the Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Successful Respondent (whether or not such potential violations directly impact the provision of goods or services under the Contract). In such case, Successful Respondent 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 Successful Respondent within five (5) business days after the suspension or termination. Successful Respondent may provide a response and request an opportunity to present its position. DIR or Customer will review Successful Respondent's presentation but is under no obligation to provide formal response.

11.2.6 Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract in accordance with Section [4.5](#).

11.2.7 Successful Respondent Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay all amounts due for products or services ordered prior to the effective expiration or termination date and ultimately accepted.

11.3 Force Majeure

DIR, Customer, or Successful Respondent may be excused from performance under the Contract or a Purchase Order for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order (each such event, an “Event of Force Majeure”), provided that the party experiencing such 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 or impact 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 Section, 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 such Customer that Successful Respondent will not be able to deliver services in a timely manner to meet the business needs of such Customer.

12 NON-SOLICITATION OF STATE EMPLOYEES

Successful Respondent shall not solicit, directly or indirectly, any employee of DIR who is associated with the Contract for a period of ninety (90) calendar days following the expiration or termination of the Contract. Further, Successful Respondent shall not solicit, directly or indirectly, any employee of a Customer who is associated with a Purchase Order for a period of ninety (90) calendar days following the expiration or termination of such Purchase Order.

13 WARRANTY

Customers may provide written notice to Successful Respondent of errors, inaccuracies, or other deficiencies in products or services provided by Successful Respondent under a Purchase Order within thirty (30) calendar days or receipt of an invoice for such products or services. Successful Respondent shall correct such error, inaccuracy, or other deficiency at no additional cost to Customer.

14 NOTIFICATION

14.1 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 (3) 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 the Contract or to such other address as such party shall have notified the other party in writing.

14.2 Handling of Written Complaints

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

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

15 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.

<END OF APPENDIX A>



HUB Subcontracting Plan (HSP)

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

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

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

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

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Motorola Solutions Inc State of Texas VID #: 136111580000
Point of Contact: Mike Fink Phone #: 512-937-3521
E-mail Address: mike.fink@motorolasolutions.com Fax #: 512-973-0295
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Requisition #: DIR-TSO-TMP-426 Bid Open Date: 11/14/2017
(mm/dd/yyyy)

Enter your company's name here: Motorola Solutions IncRequisition #: DIR-TSO-TMP-426**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

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

☒ **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)

☐ **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1	Installation and other services	22%	78%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

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

☐ **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☐ **No** (If **No**, continue to Item d. of this SECTION.)

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

☐ **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

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

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

Enter your company's name here: Motorola Solutions Inc

Requisition #: DIR-TSO-TMP-426

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

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service 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: Motorola Solutions Inc

Requisition #: DIR-TSO-TMP-426

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

Signature

Christopher Lonvett

Printed Name

VP, Central Region

Title

1-31-2018

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)

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Enter your company's name here: Motorola Solutions Inc

Requisition #: DIR-TSO-TMP-426

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/passcmblsearch/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
Argent Associates Inc	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No	1223640982200	\$ 500000	9%
Central Electric Enterprises and Company	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No	1742023650100	\$ 500000	9%
Bennett Management Solutions LLC	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No	1821088183700	\$ 350000	4%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
Crosspoint Communications	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$ 900000	23%
Bearcom Communications	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$ 800000	22%
South Texas Communications	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$ 550000	15%
Kay Electronics	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$ 400000	10%
Texas Communications	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$ 200000	5%
RZ Communications	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$ 125000	3%
	<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)

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Enter your company's name here: Motorola Solutions Inc

Requisition #: DIR-TSO-TMP-426

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

- 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

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

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Enter your company's name here: Motorola Solutions Inc

Requisition #: DIR-TSO-TMP-426

SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: _____ Description: _____

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

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<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, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

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

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name:	Motorola Solutions Inc	State of Texas VID #:	1361115800000
Point-of-Contact:	Mike Fink	Phone #:	512-937-3521
E-mail Address:	mike.fink@motorolasolutions.com	Fax #:	512-973-0295

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name:			
Point-of-Contact:		Phone #:	
Requisition #:	DIR-TSO-TMP-426	Bid Open Date:	11/14/2017 (mm/dd/yyyy)

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

1. Potential Subcontractor's Bid Response Due Date:

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

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

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

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

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: ☐ - Not Applicable

4. Bonding/Insurance Requirements: ☐ - Not Applicable

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

Appendix C Pricing Index
DIR-TSO-4101 Amendment 5
Motorola Solutions, Inc.

Motorola Branded Products				
Category	Subcategory	Product Description	Product Code (APC)	DIR Customer Discount % off MSRP *
Portable Radios	TRBO	TRBO Radio CDM Portfolio	001	25.00%
Service	Systems Equipment	CommandCentral Aware Product	002	10.00%
Video Solutions	ILPS	RTVI	002	10.00%
Service	Hardware Maintenance	Site Maintenance	003	0.00%
Portable Radios	TRBO	TRBO Radio EX Portfolio	004	25.00%
Service	Professional Commercial Radio	AOBA	004	0.00%
Fixed Stations	Fixed Stations	PR860	005	20.00%
Professional Commercial Radio	Radio	PR860	005	10.00%
Service	Dispatch Service	Dispatch Service	006	5.00%
Service	Hardware Maintenance	ASTRO Dispatch	006	0.00%
Professional Commercial Radio	Radio	EVX S24	007	10.00%
Portable Radios	TRBO	TRBO Radio HT Portfolio	008	25.00%
Professional Commercial Radio	Business Radio	CLP	009	10.00%
Professional Commercial Radio	Vertex	Vertex Marine Radio	010	10.00%
Service	Tetra System Integration	Tetra System Integration	011	10.00%
Service	Tetra System Integration	Tetra System Integration Misc Costs	012	10.00%
Service	Tetra System Integration	Tetra System Integration Dropship	014	10.00%
Astro Subscribers	XTS/XTL	Firground	015	20.00%
Fixed Wireless	Fixed Wireless Broadband	Special Applications	015	20.00%
Professional Commercial Radio	Vertex	Vertex Airbrand	016	10.00%
Portable Radios	TRBO	TRBO Radio CP Portfolio	018	25.00%
Portable Radios	TRBO	TRBO Radio PM/CM Portfolio	019	25.00%
CAD Equipment	Computer Aided Dispatch	PremierOne CAD	020	5.00%
Service	Hardware Maintenance	TETRA Repair	021	0.00%
Subscribers	XTS/XTL	ATS-2500	022	10.00%
Service	Hardware Maintenance	PCR Repair	023	0.00%
Professional Commercial Radio	Radio	Solomns	024	10.00%
Service	Hardware Maintenance	LTE Network Performance	025	0.00%
IDEN	Noncore	3G PCMCIA Modem	026	10.00%
Professional Commercial Radio	Radio	ALPHA L	027	10.00%
Service	ASTRO System Infrastructure	DATA Carrot	028	10.00%
Drop Ship	ASTRO System Infrastructure	DATA	029	10.00%
Spillman CAD	Spillman Services	Spillman SI Services	030	0.00%
Service	IPLS Services	CommandCentral Social	031	0.00%
Portable Radios	APX Accessories	APX Body Cam Si500	032	20.00%
Portable Radios	TRBO	TRBO Radio 158 Portfolio	032	25.00%
Service	ILPS Service	CommandCentral Vault	032	0.00%
Service	Hardware Maintenance	LTE Repair	033	0.00%
Service	LTE SUA Systems Dropship	LTE SUA Upgrade Operations	034	0.00%
Professional Commercial Radio	Radio	MOTOTALK (DAYTONA)	035	10.00%
Professional Commercial Radio	Radio	Panda	036	10.00%
Portable Radios	TRBO	TRBO Radio Portfolio	037	25.00%
Mobiles	Mobile Stations	MOTOTRBO	038	10.00%
CAD Equipment	Computer Aided Dispatch	Radio IP	039	5.00%
Infrastructure	LTE Devices	Outsourced Networks	039	10.00%
Trunking	Trunking Products and Services	Wireless Valley Software	039	5.00%
LTE	LTE Devices	MXV1000 In Car Digital Video	040	10.00%
Data	Data Applications	Auto License Plate	041	10.00%
Data	Data Applications	Video Cameras	041	10.00%
Service	ASTRO SUA	Astro SUA Upgrade Operations	042	0.00%
Service	ASTRO SUA	ASTRO SUA Field Services	043	0.00%
LTE	LTE Devices	POD	044	10.00%
LTE	LTE Devices	Prince-Denali	045	10.00%
Service	Hardware Maintenance	Tetra Infrastructure Tech Support	046	0.00%
Service	Hardware Maintenance	PCR Infrastructure Tech Support	047	0.00%
Service	Hardware Maintenance	LTE Infrastructure Tech Support	048	0.00%
IDEN	Networks other Systems	Motorola PTT	049	10.00%
Service	ICC Services	Records Management	050	0.00%
LTE	LTE	LTE Sites	051	10.00%
LTE	LTE Systems Dropship	LTE BTW	052	10.00%
LTE	LTE	MME, SGW, PGW	053	10.00%
LTE	LTE Systems Dropship	HSS/PCRF	054	10.00%
LTE	LTE Systems Dropship	LTE Switch Routers	055	10.00%
LTE	LTE	Device Manager	056	10.00%

LTE	LTE Devices	Vehicular Modem	057	10.00%
LTE	LTE	USB Dongle	058	5.00%
LTE	LTE System Infrastructure	Applications	059	10.00%
LTE	LTE Systems Dropship	Deployable Core	060	10.00%
LTE	LTE	Applications	061	10.00%
LTE	LTE Systems Dropship	LTE Backhaul	062	10.00%
LTE	LTE	PSIG	063	10.00%
LTE	LTE SI	LTE HMP	064	0.00%
LTE	LTE	PDA Handheld	065	10.00%
LTE	LTE Devices	Futon-Teton	065	10.00%
LTE	LTE	Dropship	066	10.00%
LTE	LTE Systems Dropship	Shinning Red	067	10.00%
CAD Equipment	Computer Aided Dispatch	Advanced Messaging	068	10.00%
LTE	LTE System Infrastructure	Broadband Core	069	10.00%
Service	LTE SI	LTE SMP	070	0.00%
PCR	PCR Business Light	Dect High Tier	071	10.00%
PCR	PCR Business Light	Consumer Radio 2	072	10.00%
Service	Hardware Maintenance	PCR Device SFS Essential	073	0.00%
IDEN	Noncore	D15 G18 G20	074	10.00%
Fixed Wireless	Fixed Wireless Broadband	MESH	075	5.00%
Dropship	ASTRO Systems Dropship	Wireless Valley Service	076	0.00%
Service	LTE Managed Services	Apps & SW Mgmt - Smart Public Safety Solutions	077	0.00%
Infrastructure	TETRA Systems Software	TETRA Dropship	078	10.00%
Software	ILPS Service	Situational Awareness SI	079	0.00%
Video Solutions	ILPS	Real Time Crime Center	080	10.00%
Service	Hardware Maintenance	TETRA Device SFS Comprehensive	081	0.00%
Service	ASTRO Systems Services	MOSCAD ACE	085	0.00%
Trunking	Trunking Products and Services	Fixed Data	085	15.00%
Portable Radios	TRBO	TRBO Radio Portfolio	087	25.00%
Service	Hardware Maintenance	Tetra System Essential	088	0.00%
Professional Commercial Radio	PCR Business Light	Gobi Bear	089	15.00%
Software	ICC Services	PremierOne Records Delivery	090	0.00%
Service	Tetra SUA	TETRA SUA	091	0.00%
Service	Hardware Maintenance	LTE Device SFS Comprehensive	092	0.00%
Service	IPLS Services	Crime Reports	093	0.00%
Service	ICC Services	NEXT GEN ICC	094	0.00%
Service	ILPS Service	CommandCentral Aware Stream Svcs Fixed	095	0.00%
Service	ILPS Service	CommandCentral Aware Stream Svcs Mobile	096	0.00%
Spillman CAD	Spillman Services	Flex Records Delivery	097	10.00%
Service	ASTRO Managed Services	MOTOTRBO Device Subscriber Management	098	0.00%
Spillman CAD	Spillman Services	Flex Records Delivery	099	10.00%
System Integration	ASTRO System Integration	HSD	100	0.00%
System Integration	ASTRO System Integration	350W VHF GTR	101	0.00%
Service	Hardware Maintenance	TETRA Network Monitoring	102	0.00%
Mobiles	Mobile Stations	CDM750	103	26.50%
MOTOTRBO	Professional Commercial Radio	WARIS Mobile Plain	103	10.00%
Infrastructure	ASTRO System Infrastructure	PREPAID FREIGHT	104	0.00%
Professional Commercial Radio	Professional Commercial Radio	Reunion	105	10.00%
Service	Hardware Maintenance	PCR Network Monitoring	106	0.00%
Service	Hardware Maintenance	LTE Network Monitoring	107	0.00%
Portable Radios	APX Portable	APX7000L	108	27.00%
Mobiles	Mobile Stations	CDM1250	109	26.50%
MOTOTRBO	Professional Commercial Radio	WARIS Mobile Popular	109	10.00%
Professional Commercial Radio	Professional Commercial Radio	Mikoshi Radio	110	10.00%
Tetra Subscriber	Tetra Legacy	Tetra MTP810 & 50	111	10.00%
Fixed Stations	Fixed Stations	G-Series Products	112	24.00%
Trunking	Trunking Products and Services	G-Series Products	112	24.00%
Service	Hardware Maintenance	PCR System Advanced	113	0.00%
Service	Hardware Maintenance	LTE Dispatch	114	0.00%
Trunking	Trunking Products and Services	Commport	115	10.00%
Dispatch	Dispatch Solutions	NG-911 Maintenance and Repair	116	5.00%
Infrastructure	ASTRO System Integration	FSA Software	117	10.00%
Dropship	NG911 Services	E911 Emergency Systems	118	10.00%
Service	Tetra SUA	Tetra SUA Upgrade Operations	119	0.00%
Service	Tetra SUA	Tetra SUA Field Services	120	0.00%
Tetra Subscriber	Tetra Mobile	Tetra MTP3550	121	10.00%
Tetra Subscriber	Tetra Portable	Tetra NEXTEX LKP	122	10.00%
Tetra Subscriber	Tetra Portable	Tetra NEXTEX FKP	123	10.00%
Dispatch	Dispatch Solutions	Command Star/MC Series	124	19.00%
Tetra Subscriber	Tetra Portable	Tetra MTP6550	125	10.00%
Professional Commercial Radio	Portable Radios	Belize Trunking Portable	126	10.00%

System Integration	ASTRO System Integration	System Integration Outsourcing	127	0.00%
Portable Radios	APX Accessories	APX Body Cam SI500	128	20.00%
Service	ASTRO System Integration	System Integration Insourcing	128	0.00%
Dispatch	Dispatch Solutions	Gold Series Headsets	129	20.00%
Professional Commercial Radio	Subscribers	TONGA Plus	130	10.00%
Network Products	Network Products	Microwave Radio	131	15.00%
Professional Commercial Radio	Subscribers	BEACON	133	10.00%
Professional Commercial Radio	Subscribers	CLS	134	10.00%
Dropship	ASTRO System Dropship	Freight Dropship	135	0.00%
Pagers/Receiver	Pagers/Receiver	Minitor Products	136	15.00%
Portable Radios	APX Portable	APX4000XH	136	27.00%
Professional Commercial Radio	Pagers/Receiver	Minitor Products	136	15.00%
Infrastructure	ASTRO System Infrastructure	KMF	137	15.00%
Data	Data Applications	Command Central Software	138	10.00%
Service	NG911 Services	CommandCentral Anal/Pred/Tip	138	0.00%
Dispatch	Dispatch Solutions	NG-911 Hardware Callworks	139	5.00%
IDEN	Systems Equipment	MSO	140	10.00%
ILPS	ILPS Service	Records & Evidence SI	141	0.00%
Astro Subscribers	XTS/XTL	Trunk MCS2000 Duplex	142	20.00%
Professional Commercial Radio	Indirect	Freight Indirect	143	0.00%
ILPS	ILPS Service	Records & Evidence SI	144	0.00%
ILPS	ILPS Service	Records & Evidence SI	145	0.00%
Software Services	Common Services Delivery	Cloud Connect Services	146	0.00%
Dispatch	Dispatch Solutions	MND Products	147	15.00%
Infrastructure	ASTRO System Integration	IP Transport Software	147	10.00%
Network Products	Network Products	MND Products	147	15.00%
Service	ICC Services	CommandCentral Inform	149	0.00%
Service	Hardware Maintenance	PCR Device SFS Comprehensive	150	0.00%
IDEN	iDEN System Equipment	RFN	151	10.00%
Dropship	ASTRO Systems Dropship	PT Trunked Intercon	152	10.00%
Data	Data Applications	HPD	153	15.00%
Professional Commercial Radio	Mobile Radio	Deskrac Conventional	154	10.00%
Vertex	Professional Commercial Radio	Vertex NEO Reskin	156	10.00%
Private Broadband	Nitro	Nitro Infrastructure	156	10.00%
Private Broadband	Nitro	Nitro Networking	156	10.00%
Private Broadband	Nitro	Nitro End User Equipment	156	10.00%
Private Broadband	Nitro	Nitro Subscription Packages	156	10.00%
Tetra Subscriber	Tetra Portable	Tetra MTP750	157	10.00%
Portable Radios	TRBO	TRBO Radio CP Portfolio	158	25.00%
Mobiles	Mobile Stations	GM300	159	20.00%
Infrastructure	ASTRO System Integration	AVL Products	160	10.00%
Astro Subscribers	XTS/XTL	Freight Subscriber	163	0.00%
Professional Commercial Radio	Mobile Radio	VX 264	164	10.00%
Professional Commercial Radio	Mobile Radio	Consumer Radios	165	15.00%
Pagers/Receiver	Pagers/Receiver	Advisor II	169	20.00%
LTE	Devices	MW810 Mounting Gear	170	15.00%
LTE	Devices	Cascade-LEXL10	171	15.00%
Spillman CAD	Spillman Services	ALLY Delivery Services	172	0.00%
Spillman CAD	Spillman Services	Flex CAD Support Services	173	0.00%
Professional Commercial Radio	Portable Radios	YODA GP300	174	15.00%
Professional Commercial Radio	Mobile Radio	Consumer Radios (High)	175	15.00%
Astro Subscribers	XTS/XTL	XTL1500 Rebanding	176	15.00%
Data	Data Subscriber Device	MC35/MC50	177	15.00%
Video Solutions	Video	Cameras	177	10.00%
Video Solutions	Video	Video Hardware	178	10.00%
Video Solutions	Video	Video Software	179	10.00%
Video Solutions	Video	Access Control	180	10.00%
Video Solutions	Video	Video Patents	181	10.00%
Professional Commercial Radio	PCR Business Light	EMEA Consumer ELB	182	10.00%
Dropship	ASTRO Systems Dropship	Distributed Antenna Systems	183	10.00%
ILPS	ILPS Service	Situational Awareness Support Services	184	5.00%
Data	Data Subscriber Device	Service	185	0.00%
Dispatch	Dispatch Solutions	Service-Warranty	185	0.00%
Portable Radios	APX Service	APX Service Extension	185	0.00%
Professional Commercial Radio	Radio	Mozart	186	10.00%
Portable Radios	APX Accessories	APX Portable Accessories	187	27.00%
Professional Commercial Radio	Professional Commercial Radio	P110 YODA Lite	188	25.00%
Mobiles	Mobile Stations	Mobile Accessories	189	19.00%
Astro Subscribers	XTS/XTL	MTX810 Privacy Plus	191	10.00%
Vertex	Professional Commercial Radio	Van Gogh	192	10.00%
Infrastructure	Tetra Fixed Equipment	Tetra Dipc	193	10.00%

Software Upgrades	Flashport	Infrastructure Software	195	27.00%
Spillman CAD	Spillman Flex	Flex Records Support Services	196	0.00%
Spillman CAD	Spillman Flex	Flex Jail Support Services	197	0.00%
Service	LTE Managed Services	Apps & SW Mgmt - Shared Operations	198	0.00%
Service	ASTRO Managed Services	Tetra System Premier	199	0.00%
Infrastructure	ASTRO System Integration	Delivery	200	0.00%
Astro Subscribers	XTS/XTL	KVL II	201	10.00%
Dispatch	Dispatch Solutions	APX Desksets	202	20.00%
Professional Commercial Radio	Subscribers	Bali 800 900MHz	203	15.00%
Astro Subscribers	XTS/XTL	Renaissance Open	204	15.00%
Astro Subscribers	XTS/XTL	XTS2500 7 800	205	15.00%
Portable Radios	APX Accessories	APX Body Cam Si500	206	20.00%
Service	Hardware Maintenance	Local Device Repair	206	0.00%
Dispatch	Dispatch Solutions	Dropship	207	25.00%
Dropship	ASTRO System Dropship	UPS, Generators, and ancillary power equipment	207	10.00%
Fixed Stations	Fixed Station Accessories	Dropship	207	25.00%
Fixed Stations	Fixed Station Antenna Systems	Dropship	207	25.00%
Network Products	Network Products	Dropship	207	25.00%
System Integration	ASTRO System Integration	SI Project Management Labor	208	0.00%
Service	Hardware Maintenance	System Installation	209	0.00%
Infrastructure	ASTRO System Infrastructure	PKI Solution	212	10.00%
Fixed Data	Fixed Data Products	MOSCAD	214	15.00%
MOTOTRBO	Professional Commercial Radio	Motorola Applications	216	15.00%
Dropship	ASTRO System Dropship	Cambium - PTP Orthogon License	218	10.00%
Service	Hardware Maintenance	Asset & Configuration Management	219	0.00%
Smart PS	Services	3rd Party Services	220	0.00%
Astro Subscribers	XTS/XTL	Clear Spectra Midpower	221	25.00%
Fixed Network	Fixed Network Equipment	PDG Software	222	15.00%
PTT	PTT Services	Kodiak Support Services	223	0.00%
Fixed Wireless	Fixed Wireless Broadband	Point to Point	224	15.00%
Fixed Stations	Fixed Stations	Quantar/Quantro	225	10.00%
Infrastructure	ASTRO System Integration	Quantar Receiver 6809 Trunk	225	10.00%
Dispatch	Dispatch Solutions	ISSI	226	15.00%
PremierOne CAD	PremierOne CAD Services	PremierOne CAD Managed Services	227	0.00%
Dispatch	Dispatch Solutions	Centracom	228	30.00%
Dispatch	Dispatch Solutions	Logging/Astro-Tac	229	24.00%
Dropship	ASTRO Consoles	Console Accessory	229	15.00%
Tetra Subscriber	Tetra Mobile	Tetra Bosai Mobile	230	15.00%
Service	Hardware Maintenance	3rd Party Case Support	231	0.00%
CAD Equipment	Computer Aided Dispatch	Advanced Messaging	232	5.00%
Network Products	Network Products	UNS	232	10.00%
Service	PCR SUA	Software Upgrade Agreement	233	0.00%
Service	PCR SUA	Software Upgrade Agreement	234	0.00%
PremierOne CAD	PremierOne CAD Services	PremierOne Records Managed Services	236	0.00%
Software	Software Services	Cloud Connect Managed Services	238	0.00%
Vertex	Professional Commercial Radio	Vertex LMR Mobiles	239	15.00%
Professional Commercial Radio	Fixed Equipment	C100 Base Station	240	15.00%
IDEN	Noncore	Symbol	242	15.00%
Infrastructure	ASTRO System Infrastructure	Quantar Quantro ASTRO	243	10.00%
Infrastructure	Consoles	Trunked CentercomII	244	10.00%
Accessories	Other Accessories	EMEA Accessory (B2B)	245	10.00%
Professional Commercial Radio	Subscribers	ALPHA II	246	10.00%
IDEN	Noncore	MIINS	247	10.00%
IDEN	Noncore	MIINS	251	10.00%
PremierOne CAD	PremierOne CAD Services	PremierOne CAD Recurring SaaS	252	0.00%
Spillman CAD	Spillman CAD Services	Spillman Support Services Flex CAD SaaS	253	0.00%
Astro Subscribers	XTS/XTL	Saver ASTRO Accessory	256	25.00%
ILPS	ILPS Service	Analytics SaaS	258	0.00%
ILPS	ILPS Service	CommunityConnect SaaS	259	0.00%
Service	LTE SUS	LTE SUA Field Services	260	0.00%
Dispatch	Dispatch Solutions	Service Shop Supplies	261	5.00%
Dropship	ASTRO System Dropship	Towers and ancillary tower equipment	262	10.00%
Test Equipment	Test Equipment	Service Shop Supplies	262	20.00%
Software	Software Services	Cloud Connect SaaS	263	0.00%
Service	Hardware Maintenance	PTP Service	265	0.00%
PremierOne CAD	PremierOne CAD Services	PremierOne CAD 3rd Party Services	267	0.00%
Spillman CAD	Spillman CAD Services	Flex CAD 3rd Party Services	268	0.00%
Parts	Hardware Maintenance	Latin American Parts	269	15.00%
Astro Subscribers	XTS/XTL	XTS2500 Rebanding	270	15.00%
Accessories	Other Accessories	Carry Cases	271	15.00%
Parts	Hardware Maintenance	RNSG Infrastructure	272	0.00%

Fixed Stations	Fixed Station Accessories	Analog Comparator	273	10.00%
Infrastructure	ASTRO System Infrastructure	OEM CryptR Micro	274	15.00%
Fixed Data	Fixed Data Products	MOSCAD	275	15.00%
Mobiles	Mobile Stations	XTL5000	276	25.00%
Fixed Stations	Fixed Station Accessories	Smart X	277	25.00%
Trunking	Trunking Products and Services	Smartnet Controller	277	25.00%
Professional Commercial Radio	Subscribers	Bermuda Portable	278	15.00%
Trunking	Trunking Products and Services	Zone Controller	280	25.00%
Fixed Stations	Fixed Stations	Zone Manager	281	18.50%
Trunking	Trunking Products and Services	Zone Manager Interface	281	18.50%
Dropship	ASTRO System Dropship	HF-SSB BUY-IN Products	282	15.00%
IDEN	Noncore	IDEN Modem	284	10.00%
System Integration	ASTRO System Integration	Infrastructure Training	285	0.00%
System Integration	ASTRO System Integration	SI Customer Training	286	0.00%
Mobiles	Mobile Stations	PAC-RT, VRS750	287	10.00%
Infrastructure	ASTRO System Infrastructure	Engineering Services	288	0.00%
PremierOne CAD	PremierOne CAD Services	PremierOne Records 3rd Party Services	289	0.00%
Service	Hardware Maintenance	Warranty Wrap	290	0.00%
Accessories	Other Accessories	Mobile Dropship	291	10.00%
Dropship	ASTRO System Infrastructure	Dropship Equipment	292	0.00%
Professional Services	Training	Training	293	0.00%
Service	Maintenance	Services/Training	293	0.00%
Service	Hardware Maintenance	PCR Device SFS Lite	294	0.00%
Service	Hardware Maintenance	Tetra System SFS Essential	295	0.00%
Spillman CAD	Spillman CAD Services	Flex Records 3rd Party Services	296	0.00%
CAD Equipment	Computer Aided Dispatch	Records Management	297	5.00%
Service	Hardware Maintenance	Astro System Essential	298	0.00%
IDEN	Noncore	Telematic	299	10.00%
Professional Commercial Radio	Subscribers	ELM	300	10.00%
Fixed Stations	Fixed Stations	Quantar Astro Trunking	301	20.00%
Vertex	Professional Commercial Radio	Vertex Parts	301	10.00%
Infrastructure	Tetra System Switches	Tetra DIPM	302	10.00%
IDEN	IDEN System Equipment	IPL	303	10.00%
Professional Commercial Radio	Subscriber other	Subscriber Software Upgrades	304	10.00%
APX Portable Devices	APX Portable	APX4000XH	305	27.00%
ASTRO P25	ASTRO SI	SI Sight Design	306	0.00%
System Integration	Construction Services	SI Site Design including but not limited to soil testing and geo analysis	306	10.00%
Professional Commercial Radio	Portable Radios	MX800	307	10.00%
System Integration	ASTRO System Integration	System Integration ASTRO	308	0.00%
System Integration	ASTRO System Integration	System Integration ASTRO	309	0.00%
Astro Subscribers	XTS/XTL	ASTRO Saber	310	25.00%
Spillman CAD	Spillman Flex	Flex Jail 3rd Party Services	311	0.00%
Vertex	Professional Commercial Radio	Vertex LMR Accessories	312	25.00%
ILPS	ILPS Service	Digital Evidence 3rd Party Services	314	0.00%
ILPS	ILPS Service	Analytics 3rd Party Services	315	0.00%
Infrastructure	ASTRO System Infrastructure	Infrastructure	316	10.00%
ILPS	ILPS Service	CommunityConnect 3rd Party Services	317	0.00%
Infrastructure	ASTRO System Infrastructure	Infrastructure	318	10.00%
Software Services	Common Services Recurring	Cloud Connect Services 3rd Party Services	319	0.00%
Astro Subscribers	XTS/XTL	XTS5000 UHF VHF	320	25.00%
Dispatch	Dispatch Solutions	MCC5500	322	20.00%
IDEN	Noncore	MIINS	325	10.00%
Astro Subscribers	XTS/XTL	ASTRO XTS3000 Trunked	326	25.00%
WAVE PTT	Wave Tactical Recurring	Wave Tactical 3rd Party Services	327	0.00%
Infrastructure	ASTRO Consoles	Centracom II	328	25.00%
Fixed Network	Fixed Network Equipment	Site Packages	329	10.00%
CAD Equipment	Computer Aided Dispatch	PremierOne CAD	330	5.00%
WAVE PTT	Common Service	WAVE Premise 3rd Party Services	331	0.00%
Astro Subscribers	ASTRO Subscriber Software	Conventional FLASHPORT Subscriber	332	10.00%
CAD Equipment	Computer Aided Dispatch	PremierOne CAD	333	10.00%
Software	CSR Product	Software Equipment BGM Allo	334	10.00%
Service	Smart Public Safety Services	Software Services BGM Allo	335	0.00%
WAVE PTT	Wave OnCloud Recurring	Wave OnCloud 3rd Party Services	336	0.00%
Public Safety Services	Unified Communications	Critical Connect 3rd Party Services	337	0.00%
Smart PS PTT	Kodiak Recurring	Kodiak 3rd Party Services	338	0.00%
System Integration	Tetra System Integration	Tetra SI Training	339	0.00%
Software	Non Traditional System Integration	MTA Software Maintenance	340	10.00%
LTE	Devices	Fulcrum	341	15.00%
Fixed Data	Fixed Data Products	MOSCAD	342	15.00%
Data	Data Applications	Dell Laptops	343	22.00%
LTE	Devices	Private Labeled Computers	343	15.00%

Infrastructure	Base Stations	Tetra MTS1	344	15.00%
Professional Commercial Radio	Subscribers	Low Tier Business Radio	345	15.00%
MOTOTRBO	Broadband_Comms	MOTOTRBO Anywhere Gateway	346	15.00%
IDEN	IDEN System Equipment	Radio Products	347	15.00%
Service	ASTRO Managed Services	Astro System Premier	348	0.00%
Dispatch	Dispatch Solutions	NG-911 Support/Training VESTA	349	10.00%
Dispatch	Dispatch Solutions	NG-911 Software Vesta	350	5.00%
Dropship	ASTRO System Dropship	Outsourced Networks	351	10.00%
Dispatch	Dispatch Solutions	NG-911 Hardware Vesta	352	10.00%
Console Equipment	MotoConsole	MotoConsole Product	354	15.00%
Astro Subscribers	XTS/XTL	XTS2000	355	25.00%
MOTOTRBO	Broadband_Comms	MOTOTRBO Anywhere Licenses	356	10.00%
Service	Gridstone Services	Gridstone	357	0.00%
Infrastructure	ASTRO System Infrastructure	IP Transport Software	358	10.00%
MotoConsole	MotoConsole Services	MotoConsole Support Services	359	0.00%
Fixed Stations	Fixed Stations	Quantar Receiver	360	21.50%
Pagers/Receiver	Pagers/Receiver	Paging	361	15.00%
Service	Hardware Maintenance	LTE System SFS Essential	361	0.00%
Dropship	Site Equipment	Shelters including but not limited to landscaping, fencing and grounding	362	10.00%
Parts	Hardware Maintenance	Midtier Hardware	362	0.00%
Software Products	Common Services Software	Misc 3rd Party Software	363	0.00%
P25	P25 VESTA	P25 VESTA Managed Services	364	0.00%
P25	P25 ASTRO SI	P25 VESTA Integration Services	365	0.00%
P25	P25 VESTA	P25 VESTA Product	366	10.00%
Spillman CAD	Spillman CAD Software	Spillman Flex CAD Software Licenses	367	10.00%
ILPS	ILPS Systems Software	Situational Awareness MSI Software Licenses	368	10.00%
Service	ICC Services	NETRMS	370	0.00%
Software Upgrades	Flashport	Radio Subscription Software	371	0.00%
Accessories	Other Accessories	Speaker Microphones	372	25.00%
Service	Hardware Maintenance	Astro System Advanced	373	0.00%
Mobiles	Mobile Stations	Astro Consolette	374	19.00%
LTE	LTE	LTE	375	0.00%
Professional Commercial Radio	Subscribers	Andorra Amazon LKP	376	10.00%
Fixed Stations	Fixed Stations	Trunked Central Controller	377	17.00%
Trunking	Trunking Products and Services	Central Controller	377	17.00%
LTE	Devices	AIRMOBILE	378	10.00%
Professional Commercial Radio	Subscribers	Brown Bear	379	10.00%
Service	Airwave Pronto	Airwave Pronto	380	0.00%
Fixed Network	Fixed Network Equipment	Enterprise Terminals	381	15.00%
Fixed Data	Fixed Data Products	MOSCAD	382	15.00%
Infrastructure	ASTRO System Infrastructure	NFM SW	382	10.00%
Tetra Subscriber	Portable Radios	Tetra MTP6750	384	10.00%
Spillman CAD	Spillman Flex Records	Flex Records MSI Software Licenses	385	10.00%
Service	Hardware Maintenance	Repair Bank	386	0.00%
Service	Other Smart Public Safety Services	Consoles SI	387	0.00%
IDEN	Noncore	MIINS	388	10.00%
Spillman CAD	Flex Records Software	Flex Jail MSI Software Licenses	389	10.00%
Service	Hardware Maintenance	System Management	390	0.00%
IDEN	IDEN System Equipment	Radio Products	391	10.00%
System Integration	ASTRO System Integration	ASIA Dropship	392	10.00%
Service	Hardware Maintenance	Contract Administration	393	0.00%
Service	ASTRO Managed Services	LTE Network Ownership	394	0.00%
Service	Hardware Maintenance	ASTRO Device SFS Comprehensive	395	0.00%
Software	Common Services	Cloud Connect Services MSI Software Licenses	397	0.00%
Infrastructure	Base Stations	Tetra MTS2	398	10.00%
Software Services	Common Services Recurring	Misc 3rd Party	400	0.00%
Professional Commercial Radio	Portable Radios	Digital Portable	401	10.00%
Professional Commercial Radio	Portable Radios	HT1000 GP900	402	25.00%
Fixed Data	Fixed Data Products	Data Controller/RNC	403	15.00%
Dispatch	Dispatch Solutions	Centracom	404	25.00%
Infrastructure	ASTRO System Infrastructure	K Core	405	15.00%
Astro Subscribers	XTS/XTL	PRO SMARTZONE	406	15.00%
Astro Subscribers	XTS/XTL	XTS2500 UHF VHF	407	25.00%
IDEN	Noncore	BT Handset ACP BMW	408	25.00%
Tetra Subscriber	Portable Radios	Tetra MTP3100 & 200	409	10.00%
Astro Subscribers	XTS/XTL	Prepaid Freight	410	0.00%
Portable Radios	APX Portable	VX P949	411	25.00%
Astro Subscribers	XTS/XTL	Conventional ASTRO Spectra	412	25.00%
ILPS Services	Records and Evidence	Virtual Partner SaaS	413	0.00%
Accessories	Other Accessories	Visar Accessories	414	25.00%
Dispatch	Dispatch Solutions	Monitors	415	10.00%

Dropship	ASTRO_SYSTEMS_DROPSHIP	Test Equipment	415	10.00%
PS Equipment	Critical Connect Product	Critical Connect MSI Software Licenses	416	10.00%
Fixed Stations	Fixed Stations	Misc Site Equipment	417	10.00%
IDEN	Noncore	FUZE	418	10.00%
Software	ASTRO_SUA	UNS SMA	419	10.00%
PCR	Subscriber	EVX 261	420	10.00%
MOTOTRBO	Subscriber	Application Partner Programs	421	10.00%
MOTOTRBO	MOTOTRBO	Infrastructure	422	10.00%
Service	Tetra Managed Services	Tetra Portugal	423	0.00%
Fixed Stations	Fixed Stations	Master Site/Astro	424	15.00%
Fixed Stations	Fixed Stations	Small Systems L Core	425	15.00%
Infrastructure	ASTRO System Infrastructure	L Core	425	15.00%
Mobiles	Mobile Stations	APX4000	426	27.00%
Portable Radios	APX Portable	APX4000	426	27.00%
Portable Radios	APX Portable	APX4000 APX2000	426	27.00%
System Integration	ASTRO System Integration	Construction Management including subcontractors	427	0.00%
Professional Commercial Radio	Mobile Radio	Maxtrac Conventional	428	25.00%
Professional Commercial Radio	Portable Radios	GR900	429	25.00%
Software Upgrades	Flashport	Flashport Software	430	27.00%
Service	Hardware Maintenance	Astro Device Management Essential	431	0.00%
Astro Subscribers	XTS/XTL	PC MTS2000 Conventional	432	25.00%
MOTOTRBO	Fixed Equipment	Mototrobo High Tier Repeater	433	15.00%
ILPS	Situational Awareness Product	Situational Awareness MSI Hardware	434	10.00%
Professional Commercial Radio	Fixed Equipment	Capacity Max Hardware	435	15.00%
Professional Commercial Radio	Mobile Radio	Maxtrac 900 Mhz	436	15.00%
Astro Subscribers	APX NEXT	OEM Subscriber	437	27.00%
Professional Commercial Radio	Mobile Radio	Maxtrac 888	438	15.00%
MOTOTRBO	Fixed Equipment	827 Controller	439	15.00%
System Integration	ASTRO System Integration	Special Service	441	0.00%
Portable Radios	TRBO	TRBO Radio PR Portfolio	442	25.00%
Dispatch	Dispatch Solutions	MCC Console	443	25.00%
Infrastructure	Consoles	MCC 7500	443	25.00%
Spillman CAD	Spillman CAD Flex	Flex CAD 3rd Party Hardware and Software	445	0.00%
Professional Commercial Radio	Portable Radios	Andorra Non-Display Portable Radio	446	15.00%
Vertex	Subscribers	Vertex LMR Fixes	447	15.00%
Fixed Stations	Fixed Stations	Quantar/Quantro	448	20.00%
Professional Commercial Radio	Software	Capacity Max software-License	449	15.00%
Pagers/Receiver	Pagers/Receiver	Pagers	452	15.00%
Accessories	Batteries	CGISS Batteries	453	25.00%
Dispatch	Dispatch Solutions	Audio Accessories	454	15.00%
Fixed Data	Fixed Data Products	Data Subscriber	455	15.00%
Parts	Hardware Maintenance	RPG Low/Mid/High Manual	456	0.00%
Fixed Station	Fixed Station Accessories	Infrastructure Antennas	457	20.00%
Service	Hardware Maintenance	ASTRO Device Repair	458	10.00%
PremierOne CAD	PremierOne CAD 3rd Party	PremierOne Records 3rd Party Hardware and Software	459	0.00%
Service	Hardware Maintenance	ASTRO System SFS Advance	460	0.00%
Service	Hardware Maintenance	Device Installation	461	0.00%
Astro Subscribers	XTS/XTL	KLV 3000	462	10.00%
Professional Commercial Radio	Subscriber	ALPHA X	463	10.00%
Service	ASTRO Managed Services	Tetra Device Subscriber Management	464	0.00%
Astro Subscribers	XTS/XTL	ATS3000	465	25.00%
Mobiles	Mobile Stations	APX1500	466	27.00%
Spillman CAD	Spillman Flex	Flex Records 3rd Party Hardware and Software	467	0.00%
Spillman CAD	Spillman Flex	Flex Jail 3rd Party Hardware and Software	468	0.00%
Fixed Data	Fixed Data Products	NFM Products	469	15.00%
Infrastructure	ASTRO System Infrastructure	NFM Hardware	469	15.00%
APX Portable	Portable Radios	Soldier MAC	470	27.00%
Mobiles	Mobile Stations	APX1500/APX4500	471	27.00%
CAD Equipment	Computer Aided Dispatch	CAD	472	10.00%
Spillman CAD	Spillman Flex Equipment	Spillman Flex Equipment	472	10.00%
CAD Equipment	Computer Aided Dispatch	CAD	473	5.00%
Spillman CAD	Spillman Flex	Spillman Services	473	0.00%
Fixed Stations	Fixed Stations	MTR	474	23.00%
MOTOTRBO	MOTOTRBO	Applications	475	10.00%
Professional Commercial Radio	Mobile Radio	MOTOTRBO Trunking Mobile	475	10.00%
Accessories	Other Accessories	DC Accessories	476	25.00%
Professional Commercial Radio	Portable Radios	Atex MOTOTRBO Portable	477	25.00%
MOTOTRBO	Fixed Equipment	Mototrobo Mid Tier Repeater	478	10.00%
Professional Commercial Radio	Portable Radios	PTX600 Trunked (MPT1327)	479	10.00%
Portable Radios	APX Portable	APX6000/APX7000	481	27.00%
Infrastructure	ASTRO System Infrastructure	D Series Hardware	482	15.00%

Portable Radios	TRBO	TRBO Radio PM Portfolio	483	25.00%
Mobiles	Mobile Stations	MOTOTRBO	484	10.00%
IDEN	Noncore	IMS	485	10.00%
Public Safety	ICC Smart Public Safety Equipment	Procad UK	486	10.00%
LTE	LTE System Integration	LTE FTR	487	10.00%
Video Solutions	Fixed Video	Camera's	488	10.00%
ILPS	Digital Evidence Product	Digital Evidence 3rd Party Hardware and Software	489	0.00%
Dropship	ASTRO System Infrastructure	Dropship	490	10.00%
IDEN	Noncore	RFDS Cobra	491	10.00%
Public Safety	Software Product	Cloud Connect Services 3rd Party Hardware and Software	492	0.00%
IDEN	Noncore	TPS TPU EU	493	10.00%
Astro Subscribers	XTS/XTL	Trunked ASTRO Mobile	494	25.00%
Trunking	Trunking Products and Services	PDG Hardware	495	15.00%
ILPS	Common Services Recurring	Misc Support	497	0.00%
ILPS	Records and Evidence	Virtual Partner Software	498	0.00%
Fixed Data	Fixed Data Products	MOSCAD	499	10.00%
Mobiles	Mobile Stations	XTL5000	500	25.00%
Dropship	ASTRO System Dropship	MICOM-2000	501	10.00%
Infrastructure	Base Stations	Tetra Site Software	502	10.00%
LTE	Devices	VRM500	503	10.00%
Infrastructure	Consoles	Gold Series Elite	504	25.00%
Accessories	Other Accessories	Callbox	505	10.00%
Infrastructure	Fixed Stations	Tetra MTS Shared	506	10.00%
IDEN	System Equipment	EBTS Cabinets	507	10.00%
LTE	Devices	VRM600	508	10.00%
Fixed Stations	Fixed Stations	Astro Quantar	509	25.00%
Public Safety	Broadband Comms	Critical Connect 3rd Party Hardware and Software	510	0.00%
Professional Commercial Radio	Mobile Radio	BALI Display Mobile Radio	511	10.00%
Fixed Stations	Fixed Stations	MTR3000	512	24.00%
PremierOne CAD	PremierOne CAD Product	PremierOne CAD MSI Software Licenses	513	10.00%
Mobiles	Mobile Stations	XTL2500	514	25.00%
Fixed Stations	Fixed Station Accessories	Transmission Line	515	20.00%
MOTOTRBO	MOTOTRBO	Applications	516	10.00%
Mobiles	Mobile Stations	XTL2500	518	25.00%
Security	Network Security	Network Security Monitoring	519	0.00%
Security	Security Update	Security Update	519	0.00%
Dispatch	Dispatch Solutions	WAVE Technology	520	10.00%
MOTOTRBO	Fixed Equipment	Mototrobo Low Tier Repeater	521	10.00%
IDEN	System Equipment	IDEN Accessories	522	10.00%
Astro Subscribers	XTS/XTL	RDX Terminal Controllers	523	10.00%
Dispatch	Dispatch Solutions	Motobridge	524	10.00%
Fixed Stations	Fixed Station Accessories	Astro DIU	524	15.00%
Secure Solutions	ASTRO	ASTRO DIU	524	15.00%
Fixed Stations	Fixed Station Accessories	Astro Comparator	525	15.00%
Secure Solutions	ASTRO	ASTRO Comparator	525	15.00%
Astro Subscribers	XTS/XTL	ASTRO Spectra Plus	526	15.00%
Mobiles	Mobile Stations	APX6500	527	27.00%
IDEN	System Equipment	EBTS IPL	528	10.00%
IDEN	System Equipment	Private IDEN Infrastructure	529	10.00%
Infrastructure	System Switches	Tetra Network Management	530	10.00%
IDEN	Noncore	Location & Microtag	531	10.00%
Infrastructure	System Switches	Tetra Infrastructure Secure	532	10.00%
Service	System Equipment	Fusion 2	533	0.00%
Service	Communication Services	WAVE Cloud Connect SaaS	534	0.00%
Service	Communication Services	WAVE Cloud Connect HW	535	0.00%
APX Portable	Portable Radios	APX Covert Portable	536	27.00%
Fixed Stations	Fixed Stations	SZ Intellirepeater	537	27.00%
Professional Commercial Radio	Software	Radio Application	538	10.00%
Professional Commercial Radio	Software	Visar Privacy Plus	539	25.00%
Service	IDEN Services	SMP Services	540	0.00%
WAVE PTT	Wave Tactical Product	WAVE Tactical MSI Software Licenses	541	10.00%
Infrastructure	Tetra System Switches	Tetra Call Processing	542	10.00%
Tetra Subscriber	Portable Radios	Tetra BOSAI Portable	543	10.00%
Infrastructure	Tetra System Switches	Tetra CNE Interconnect	544	10.00%
Kodiak PTT	Kodiak Product	Kodiak MSI Software Licenses	545	10.00%
Professional Commercial Radio	Subscriber	Tonga	546	10.00%
IDEN	System Equipment	EBTS Radios	547	10.00%
CAD Equipment	Computer Aided Dispatch	CAD	548	10.00%
Service	Communication Services	Wave Managed Services	549	0.00%
Professional Commercial Radio	Subscribers	Vanuatu	550	10.00%
Service	Communication Services	WAVE Essential	551	0.00%

Parts	Batteries	Competitive Two Way	552	25.00%
Service	Communication Services	WAVE Advanced	553	0.00%
Mobiles	Mobile Accessories	Mobile Antennas	554	15.00%
Accessories	Other Accessories	Portable Antenna	555	25.00%
Service	HW_MAINTENANCE	Tetra Device Repair	556	0.00%
MOTOTRBO	MOTOTRBO	Controller	557	10.00%
Infrastructure	Tetra System Switches	Tetra Infrastructure Hardware 3rd Party	558	10.00%
Infrastructure	Tetra System Switches	Tetra Mobile Data	559	10.00%
Service	Hardware Maintenance	ASTRO Device SFS Essential	560	0.00%
Security	Security Update	ASTRO Remote Security Update Service (RSUS)	560	0.00%
Service	Maintenance	Service Maintenance	561	0.00%
APX Portable	Portable Radios	APX7000XE APX Fire	562	27.00%
MOTOTRBO	MOTOTRBO	Controller	563	10.00%
Vertex	Subscribers	LMR Spares	564	10.00%
Infrastructure	Tetra System Switches	Tetra CNE Consoles	565	10.00%
Professional Commercial Radio	Mobile Radio	Spectra Privacy Plus	566	10.00%
Software	Software Product	Misc Common Services Product	567	10.00%
ICC	PremierOne 3rd Party	PremierOne CAD 3rd Party Hardware and Software	568	0.00%
LTE	System Infrastructure	LXN500	569	10.00%
Astro Subscribers	XTS/XTL	Portable Repeaters	570	10.00%
Mobiles	Mobile Stations	DVR	571	15.00%
ILPS	Situational Awareness Product	Situational Awareness 3rd Party Hardware and Software	572	0.00%
CAD Equipment	CSR Product	CommandCentral Conn. Eq.	573	10.00%
Software	Tetra SUA	Tetra SSA	574	10.00%
Professional Commercial Radio	Mobile Radio	TRC Housing	575	10.00%
Infrastructure	Tetra	Tetra Infrastructure Software	576	10.00%
Accessories	Other Accessories	Waris Accessories	577	10.00%
Portable Radios	APX Portable	APX8000	579	27.00%
WAVE PTT	Wave Tactical Product	WAVE Tactical 3rd Party Hardware and Software	580	0.00%
APX Portable	Portable Radios	APX8000XE	581	27.00%
Professional Commercial Radio	Business Radio	MS50	582	10.00%
WAVE PTT	WaveOnCloud Product	Wave OnCloud 3rd Party Hardware and Software	583	0.00%
Kodiak PTT	Kodiak Product	Kodiak 3rd Party Hardware and Software	584	0.00%
Mobiles	Mobile Stations	XTL5000	585	25.00%
Service	Hardware Maintenance	Tetra System Advanced	587	0.00%
PremierOne CAD	PremierOne CAD Recurring	PremierOne CAD Support Services	588	0.00%
PremierOne Records	PremieOne Records	PremierOne Records Support Services	589	0.00%
Fixed Stations	Fixed Stations	Quantar Receiver	590	21.50%
Parts	Hardware Maintenance	Legacy Infrastructure Data Paging	591	10.00%
Trunking	Trunking Products and Services	MTR2000 Trunking	593	23.00%
IDEN	System Equipment	P-IDEN Accessories	594	10.00%
Fixed Stations	Fixed Stations	STR3000	595	18.00%
IDEN	System Equipment	EBTS Components	596	10.00%
Infrastructure	Tetra Infrastructure	Tetra CNE MCC7500	597	10.00%
System Integration	Tetra System Integration	Tetra SI Motorola Shared	598	10.00%
System Integration	Tetra System Integration	Tetra SI Motorola Shared	599	10.00%
Data	Data Applications	Command Central Vault	600	15.00%
Service	ILPS Service	CommandCentral Connections	600	0.00%
WAVE PTT	WAVE Tactical Recurring	WAVE Tactical Support Services	601	0.00%
Astro Subscribers	XTS/XTL	Subscriber Other	602	25.00%
Professional Commercial Radio	Mobile Radio	Mostar Trunked	603	10.00%
Astro Subscribers	XTS/XTL	Trunked Spectra	604	25.00%
WAVE PTT	WAVE Tactical Recurring	WAVE Tactical Managed Services	605	0.00%
Wireless Mobility	Canopy Wireless	Point to Point	606	15.00%
Parts	Other Accessories	Tetra Accessories	607	10.00%
Public Safety	ICC System Equipment	RMS Software	608	10.00%
Professional Commercial Radio	Software	Elcomplus Applications	610	10.00%
Dropship	ASTRO System Dropship	Smart WIBB	611	10.00%
ILPS	ILPS Services	Situational Awareness SaaS	612	0.00%
Service	Maintenance	Consoles SW Maintenance	613	0.00%
Service	Maintenance	Consoles HW Maintenance	614	0.00%
Tetra	Infrastructure	Tetra SUA	615	10.00%
ILPS	ILPS Service	Digital Evidence SaaS	616	0.00%
Astro Subscribers	XTS/XTL	Clear Spectra Conventional	617	10.00%
Service	Airwave	Airwave Managed Services	618	0.00%
Accessories	Other Accessories	900 Digital Accessories	619	25.00%
Astro Subscribers	XTS/XTL	PC-XTS3000	620	25.00%
Astro Subscribers	XTS/XTL	Subscriber Carrot	621	25.00%
IDEN	Noncore	Spirit GSM	622	10.00%
Astro Subscribers	XTS/XTL	MCS2000	623	10.00%
Astro Subscribers	XTS/XTL	XTL2500 Rebanding	624	10.00%

Portable Radios	TRBO	TRBO Radio PR Portfolio	626	25.00%
Professional Commercial Radio	Subscriber	Belize ATEX	627	10.00%
Professional Commercial Radio	Subscriber	Inmetro MSHA	628	10.00%
WAVE PTT	WAVE OnCloud Recurring	WAVE OnCloud SaaS	629	0.00%
Kodiak PTT	Kodiak Recurring	Kodiak SaaS	630	0.00%
Service	Tetra Managed Services	Tetra Network Ownership	631	0.00%
Tetra Subscriber	Portable Radios	Tetra LEO	632	10.00%
Spillman CAD	Spillman Ally	ALLY SaaS	633	0.00%
ILPS	Situational Awareness Services	Situational Awareness 3rd Party Services	634	0.00%
LTE	Devices	LTE Device Dropship	635	10.00%
Service	IDEN Services	SMP Software	636	0.00%
Professional Commercial Radio	Subscriber	VX 450	637	10.00%
MOTOTRBO	Subscriber	Waris Portable	638	10.00%
Broadband	Critical Connect Product	Critical Connect Delivery Services	639	0.00%
IDEN	System Equipment	MSO	640	0.00%
IDEN	System Equipment	Warranty	641	0.00%
WAVE PTT	WAVE OnCloud Product	WAVE OnCloud MSI Hardware	642	10.00%
Fixed Stations	Fixed Stations	DIU	643	15.00%
Mobiles	Mobile Accessories	Misc Accessories	644	19.00%
Avigilon Video	Managed Video	Avigilon Managed Services	645	0.00%
Maintenance Services	Sonoma Hardware	Sonoma Hardware Support	646	0.00%
Infrastructure	ASTRO System Equipment	Trunked Terminals Software	647	10.00%
IDEN	IDEN System Equipment	Private IDEN Dropship	648	10.00%
Professional Commercial Radio	Portable Radios	VX 2100 2200	649	10.00%
Smart Public Safety	VaaS Video	VaaS PS Hardware	650	10.00%
Professional Commercial Radio	Portable Radios	HT800 VHF	651	10.00%
Mobiles	Mobile Stations	APX Options	652	27.00%
Accessories	Other Accessories	Telario	653	10.00%
Astro Subscribers	XTS/XTL	Covert Portable XTS4000	654	25.00%
Mobiles	Mobile Stations	APX7000	655	27.00%
Portable Radios	APX Portable	APX Options	655	27.00%
Mobiles	Mobile Stations	APX7500/APX8500	656	27.00%
Astro Subscribers	XTS/XTL	XTS1500 Rebanding	657	25.00%
Professional Commercial Radio	Subscriber	Centro Plus	658	10.00%
Public Safety	ICC System Equipment	PSA 3rd Party Professional Services	659	0.00%
Dispatch	Dispatch Solutions	WAVE Technology	660	10.00%
Software Products	VaaS Video	VaaS DRN Hardware	662	10.00%
Software Products	VaaS Video	VaaS EDX Hardware	663	10.00%
Software Products	VaaS Video	VaaS PL Hardware	664	10.00%
Software Products	VaaS Video	DISH PS Delivery	665	0.00%
Software Services	VaaS Video	DISH Delivery	666	0.00%
Software Services	VaaS Video	DISH EDX Delivery	667	0.00%
Software Services	VaaS Video	DISH PL Delivery	668	0.00%
Software Services	VaaS Video	DISH PS Support	669	0.00%
Data	Data Applications	Intelligent Data Portal	670	0.00%
Astro Subscribers	XTS/XTL	Subscriber Adjustment	671	0.00%
Portable Radios	TRBO	TRBO Radio HT Portfolio	672	25.00%
APX Portable	Portable Radios	APX8000Xi	673	27.00%
Software Services	VaaS Recurring	DISH DRN Support	674	0.00%
Fixed Stations	Fixed Stations	SZ Intellirepeater	675	20.00%
Service	Hardware Maintenance	Tetra System SFS Advance	676	0.00%
Infrastructure	ASTRO System Infrastructure	D Series Harware	677	20.00%
Astro Subscribers	XTS/XTL	LTS2000 Trunking	678	20.00%
Professional Commercial Radio	Business Radio	SP21 FP8	679	20.00%
Fixed Stations	Fixed Stations	Data Base Station	680	21.50%
Mobiles	Mobile Stations	APX7500/APX8500	681	27.00%
Professional Commercial Radio	Business Radio	Malta	682	10.00%
Software Services	VaaS Recurring	DISH EDX Support	683	0.00%
Infrastructure	Tetra Fixed Equipment	Tetra MTS4L	684	10.00%
Service	ASTRO Managed Services	LTE System Premier	685	0.00%
Professional Commercial Radio	Console	Avtec Third Party Console	686	10.00%
Astro Subscribers	XTS/XTL	XTS MT 1500	687	20.00%
Software	SUA	LTE SUA & SMA	688	10.00%
LTE	Devices	MESIV MAKOM	689	10.00%
Professional Commercial Radio	Subscribers	Consumer Radio (LOW)	690	10.00%
Service	LTE Managed Services	Apps & SW Mgmt - Systems and Software Enablement	691	0.00%
Software Services	VaaS Recurring	DISH PL Support	692	0.00%
Software Services	VaaS Recurring	DISH PS SaaS	693	0.00%
Software Services	VaaS Recurring	DISH DRN SaaS	694	0.00%
Software Services	VaaS Recurring	DISH EDX SaaS	695	0.00%
Software Services	VaaS Recurring	DISH PK Saas	696	0.00%

Other	Operation Equipment	HCS Docklink	697	10.00%
Service	ASTRO Managed Services	LTE Device Subscriber Management	698	0.00%
Service	ILPS Service	Professional Services Planning	699	0.00%
Service	Hardware Maintenance	Astro Device Management Advanced	700	0.00%
Service	ASTRO Managed Services	Astro Device Management Premier	701	0.00%
CAD Equipment	Computer Aided Dispatch	Premier CAD Maintenance	702	5.00%
Professional Commercial Radio	Mobile Radio	Misc Mobile Shared System	703	10.00%
Infrastructure	ASTRO System Infrastructure	AME	704	10.00%
Professional Commercial Radio	Subscriber	VL50	705	10.00%
Dispatch	Dispatch Solutions	MCC Accessories	706	20.00%
Dispatch	Dispatch Solutions	Dropship	708	20.00%
Fixed Data	Fixed Data Products	Fire Station Alerting	708	20.00%
LTE	LTE	Battery Backup	708	20.00%
Network Products	Network Products	Network Security	708	20.00%
Trunking	Trunking Products and Services	Dropship	708	20.00%
Professional Commercial Radio	Mobile Radio	XPR5500 Clean Cab Radio	710	10.00%
Service	Installation	P1225LTR	711	0.00%
Managed Services	Device Managed Services	Device Application Subscription Services	712	10.00%
Professional Commercial Radio	Portable Radios	Timor FKP Portable	713	10.00%
Service	Hardware Maintenance	Tetra Device SFS Lite	715	0.00%
Service	IDEN Services	Turnkey Services	716	0.00%
MOTOTRBO	Mobile Radio	Waris Mobile Prime	717	10.00%
Avigilon Video	Managed Video	Video Premier	718	10.00%
Professional Commercial Radio	Portable Radios	Timor LKP Portable	719	10.00%
Professional Commercial Radio	Portable Radios	Visar	720	25.00%
Astro Subscribers	XTS/XTL	XTS5000 7 800	721	25.00%
Astro Subscribers	XTS/XTL	Trunked MCS2000	722	25.00%
Hardware Maintenance	APX Next Services	Radio Next Device Management Essential	723	0.00%
Hardware Maintenance	APX Next Services	Radio Next Device Management Advanced	724	0.00%
ASTRO SUA	APX Next Services	Radio Next Device SMA	725	0.00%
Portable Radios	XTS	XTS1500	726	25.00%
ASTRO Managed Services	APX Next Services	Radio Next Device Management Premier	727	0.00%
Emerging Solutions	Emerging Solutions SI	Emerging Solutions SI	728	0.00%
Dispatch	Dispatch Solutions	Gold Series Flashes	729	17.00%
Portable Radios	Portable Radios	HT1250	729	33.50%
Emerging Solutions	Emerging Solutions Services	Emerging Solutions Services	730	0.00%
IDEN	IDEN System Equipment	Private IDEN Subscribers	731	15.00%
Dispatch	Dispatch Solutions	NG-911 Implementation Warranty	732	0.00%
Emerging Solutions	Emerging Solutions Services	Emerging Solutions Software Solutions	733	0.00%
Avtec	Avtec Console	Avtec Product	735	10.00%
Data	Data Subscriber Device	MW810	736	22.00%
Professional Commercial Radio	Subscribers	Waris ATX	737	15.00%
ASTRO SUA	Avtec Console Services	Avtec Scoutcare	738	0.00%
ASTRO SUA	ASTRO Software Maintenance	ASTRO SUA Completed Contract	739	0.00%
Dispatch	Dispatch Solutions	MIP5000	740	20.00%
ASTRO SUA	ASTRO Software Maintenance	ASTRO SUA Upgrade Operations	741	0.00%
Portable Radios	APX Accessories	Misc APX Accessories	742	27.00%
Infrastructure	ASTRO System Infrastructure	ASTRO Receivers	743	15.00%
Fixed Stations	Fixed Stations	Misc Parts	744	20.00%
ASTRO Maintenance	ASTRO SUA	ASTRO SUA Field Services	745	0.00%
Maintaenance Services	Services Training	SUA Training	746	0.00%
Tetra Subscriber	Portable Radios	Tetra Software Subscribers	747	10.00%
IDEN	IDEN System Equipment	Private IDEN Software	748	10.00%
Portable Radios	TRBO	TRBO Radio HT Portfolio	749	25.00%
Emerging Solutions	Drones	Drones	750	10.00%
Professional Commercial Radio	Subscribers	Tahiti Numeric	751	10.00%
Professional Commercial Radio	Subscribers	Timor ND Portable	752	10.00%
Service	Hardware Maintenance	Devices Tech Support	753	0.00%
Dropship	Console	Nimbus Dispatch Product	754	10.00%
Portable Radios	APX Portable	APX6000 Basic	755	25.00%
Portable Radios	APX Portable	APX6000XE	756	27.00%
Mobile Radios	APX Mobiles	APX4500 Li	757	27.00%
Service	Hardware Maintenance	PCR Dispatch	758	0.00%
Professional Commercial Radio	Portable Radios	RADIUS P100 Portable	759	10.00%
Mobiles	Mobile Stations	APX Options	761	27.00%
Service	IDEN Services	Network Planning Design	762	0.00%
Service	IDEN Services	Program Management	763	0.00%
Service	IDEN Services	Network Performance	764	0.00%
Service	IDEN Services	Operations and Maintenance	765	0.00%
Data	Data Applications	IDP Services	766	0.00%
Service	Dispatch Service	Dispatch Service	768	0.00%

Service	Maintenance	Network Preventive & Onsite Infrastructure Response	769	0.00%
Service	Maintenance	SUAI	769	0.00%
Professional Commercial Radio	Portable Radios	Visar Conventional	770	20.00%
Software	ASTRO SUA	Devices and Accessories SMA	771	20.00%
Service	Maintenance	Technical Support	772	0.00%
Service	Hardware Maintenance	Tetra Device SFS Essential	773	0.00%
Service	LTE Managed Services	Apps & SW Mgmt - Third Party	774	0.00%
Mobiles	Mobile Stations	XTL1500	775	16.50%
Mobiles	Mobile Stations	Maratrac	776	20.00%
MOTOTRBO	MOTOTRBO	Portables	777	10.00%
Professional Commercial Radio	Portable Radios	XPR6100 Mid-Tier Digital Porta	778	10.00%
Tetra Subscriber	Tetra Legacy	Tetra MTH800	779	10.00%
Professional Commercial Radio	Mobile Radio	GR1225	780	10.00%
Service	Other Smart Public Safety Services	Kodiak Managed Services	781	0.00%
Broadband	Broadband_Comms	Kodiak Broadband PTT SW Products	782	10.00%
Broadband	Broadband_Comms	Kodiak Broadband PTT HW Products	783	10.00%
Astro Subscribers	XTS/XTL	Subscriber Other	784	10.00%
Portable Radios	APX Accessories	Misc Accessories	785	25.00%
Infrastructure	ASTRO System Infrastructure	Air Time Accumulator	786	25.00%
Service	Hardware Maintenance	Rental	787	0.00%
Service	Hardware Maintenance	LTE Device Repair	788	0.00%
CAD Equipment	Computer Aided Dispatch	CAD	789	10.00%
LTE	LTE	LEX11	790	10.00%
IDEN	Noncore	Apollo	791	10.00%
Mobiles	Mobile Stations	CDM1550	792	20.00%
Professional Commercial Radio	Portable Radios	GR300 GR500	793	10.00%
Professional Commercial Radio	Fixed Equipment	Professional Fixed	794	10.00%
Portable Radios	APX Accessories	Misc APX Accessories	795	27.00%
Accessories	Other Accessories	Visar Accessories	796	25.00%
CAD Equipment	Computer Aided Dispatch	CAD	797	5.00%
Service	Spillman Services	Spillman Support Services	797	0.00%
Portable Radios	APX Accessories	Misc APX Accessories	798	27.00%
Professional Commercial Radio	Mobile Radio	BALI Non Display Mobile Radio	799	10.00%
Dropship	ASTRO System Dropship	Wireless Valley Maintenance	800	0.00%
Fixed Wireless	Fixed Wireless Broadband	MESH	800	5.00%
Dropship	ASTRO System Dropship	Wireless Valley Training	801	0.00%
Service	Other Smart Public Safety Services	Kodiak Broadband PPT Services	802	0.00%
Service	Spillman Services	Spillman Nova SaaS	803	0.00%
Public Safety	ICC System Equipment	Procad Professional Services	804	0.00%
Service	Spillman Services	Spillman Ally SaaS	805	0.00%
Professional Commercial Radio	Subscribers	Malta 900MHz	806	10.00%
Professional Commercial Radio	Portable Radios	Subscribers	807	10.00%
Service	FirstNet Managed Services	FirstNet BCP	808	0.00%
Service	FirstNet Managed Services	FirstNet PTT	809	0.00%
Service	FirstNet Managed Services	FirstNet Activations	810	0.00%
Fixed Stations	Fixed Stations	Encryption	811	5.00%
Dispatch	Dispatch Solutions	NG-911 Licenses	812	15.00%
Public Safety	NG911 Services	ECW Software	812	10.00%
Service	Hardware Maintenance	Accessories SFS Comprehensive	813	0.00%
Hardware Maintenance	Security Services	ASTRO CyberSecurity	814	0.00%
Hardware Maintenance	Devices Essential	Accessories Essential	816	0.00%
Astro Subscribers	XTS/XTL	Spectra RR Cleancab	818	15.00%
Professional Commercial Radio	Subscribers	VX 261	819	15.00%
Professional Commercial Radio	Subscribers	Neocom Applications	820	10.00%
Professional Commercial Radio	Subscribers	Limited Display Keypad Subscriber	821	10.00%
Maintenance	Maintenance	SMA/SUA	823	0.00%
Infrastructure	ASTRO System Infrastructure	SUA POC	824	10.00%
Tetra	Subscriber	Tetra Pager	825	10.00%
Tetra	Subscriber	Tetra MTP6650	826	10.00%
Tetra	Subscriber	Tetra ST7500	827	10.00%
Tetra	Infrastructure	Tetra Fixed Equipment	828	10.00%
Professional Commercial Radio	Parts	Israeli Accessories	829	10.00%
Service	NG911 Services	Callworks Services	830	0.00%
Dispatch	Dispatch Solutions	NG-911 Implementation Services Callworks	831	10.00%
Service	ICC Services	Callworks SI	831	0.00%
Fixed Wireless	Fixed Wireless Broadband	Wireless LAN/Symbol	832	10.00%
Wireless Mobility	Wireless LAN	Point to Point	832	10.00%
System Integration	ASTRO	System Integration Site Construction	833	0.00%
Service	Hardware Maintenance	PCR Devices Essential Advanced	835	0.00%
Service	ASTRO Managed Services	Security Management	836	0.00%
Portable Radios	APX Accessories	Misc APX Accessories	837	27.00%

Portable Radios	APX Portable	APX900/APX1000	837	27.00%
Service	ASTRO Managed Services	PCR Devices Premier	838	0.00%
Pagers/Receiver	Pagers/Receiver	Encoders	839	15.00%
Installation	WatchGuard	Systems Integration / Deployment	840	20.00%
Portable Radios	TRBO	TRBO Radio HT Portfolio	841	25.00%
Public Safety	CSR Product	Public Service Software License	842	10.00%
IDEN	iDEN System Equipment	Private IDEN Harmony	846	10.00%
Hardware Maintenance	Security Services	ASTRO CyberSecurity Risk Assessment	847	0.00%
Accessories	Other Accessories	Consumer Accessories	849	10.00%
CAD Equipment	Computer Aided Dispatch	CAD	850	5.00%
Service	ICC Services	Mobile Apps Maintenance	850	0.00%
Video In Car	WatchGuard ICV	Hardware - In-Car Video (ICV) - M500 / 4RE	851	20.00%
Video Body Worn	WatchGuard BWV	Hardware - Body Worn Camera (BWC) - VISTA or V300	852	20.00%
Video Maintenance	WatchGuard SW Maint	Software Maintenance	853	20.00%
Video Maintenance	WatchGuard HW Maint and Svcs	Hardware Maintenance & Services	854	20.00%
Test Equipment	Test Equipment	Shop Supplies	854	5.00%
Data	Data Subscriber Device	Wireless LAN Ports/AP's	855	10.00%
Fixed Stations	Fixed Station Accessories	Alt Building	856	10.00%
Tetra Subscriber	Legacy Equipment	Tetra MTM800	857	10.00%
Vertex	Subscriber	Vertex Standard LMR	858	10.00%
Security	Network Security	ASTRO Managed Detection and Response	859	0.00%
IDEN	iDEN System Equipment	Armadillo Accessories	861	10.00%
Professional Commercial Radio	Subscriber	Tahiti Alpha Numeric	866	10.00%
Professional Commercial Radio	Subscriber	Andorra Limited Keypad Display	867	10.00%
Vertex	Subscriber	Vertex - LMR Portables	868	10.00%
Mobiles	Mobile Stations	M1225	869	20.00%
Infrastructure	ASTRO System Infrastructure	Irrigation Products	870	10.00%
Professional Commercial Radio	Subscriber	Full Keypad Display	871	10.00%
System Integration	ASTRO System Integration	SI ET&S Vendors	872	10.00%
System Integration	ASTRO System Integration	SI Third Party Vendors	874	10.00%
Trunking	Trunking Products and Services	Zone Manager Software	877	18.50%
CAD Equipment	Computer Aided Dispatch	CAD	879	5.00%
Mobile Applications	Mobile Applications Software	CAD	879	10.00%
Service	Hardware Maintenance	MIBAS	880	0.00%
Fixed Stations	Fixed Stations	Powerline LV	881	15.00%
Service	Hardware Maintenance	On-site Field Services	882	0.00%
Service	ICC Services	UK Maintenance	887	0.00%
Tetra Subscriber	Legacy Equipment	Tetra MTP850	890	10.00%
IDEN	iDEN System Equipment	Armadillo	891	10.00%
Dispatch	Dispatch Solutions	WAVE Technology	892	10.00%
Tetra Subscriber	Portable Radios	Tetra MTP3250	893	10.00%
Video Body Worn	WatchGuard BWV aaS	Hardware - BW Camera (BWC) VISTA or V300 - As - a - Service	894	0.00%
Tetra Subscriber	Base Stations	Tetra MTS4	895	10.00%
Tetra Subscriber	Portable Radios	Tetra MTH750	896	10.00%
Video Maintenance	WatchGuard SW Maint aaS	Software Maintenance- As - a - Service	897	0.00%
Hardware Maintenance	WatchGuard HW Maint and Svcs aaS	Hardware Maintenance - As - a - Service	898	0.00%
Video In Car	WatchGuard ICV aaS	Hardware - In-Car Video (ICV) 4RE or M500 - As - a - Service	899	0.00%
Service	Hardware Maintenance	T&M System Repair	900	0.00%
Lifecycle Services	Lifecycle Services	Migration Assurance Program	901	0.00%
Lifecycle Services	Lifecycle Services	SMA	902	0.00%
Lifecycle Services	Lifecycle Services	SUA/SUA II	903	0.00%
Fixed Wireless	Fixed Wireless Broadband	Canopy	904	15.00%
Fixed Wireless	Fixed Wireless Broadband	Canopy Service	904	15.00%
Lifecycle Services	Lifecycle Services	SUS	904	0.00%
Lifecycle Services	Lifecycle Services	SA	905	0.00%
Dropship	ASTRO System Dropship	Branded Point To Multipoint	906	10.00%
Wireless Mobility	Unlicensed	Point to Point	907	20.00%
Dropship	ASTRO System Dropship	Dropship License Point To Point	908	10.00%
Wireless Mobility	Licensed	Point to Point	908	20.00%
Service	IDEN Services	Network Deployment	909	0.00%
Fixed Wireless	Fixed Wireless Broadband	PTP Service	910	15.00%
Other	Hardware	Domestic Transfer ELIM	911	10.00%
Astro Subscribers	XTS/XTL	Bosch Base Station Switch	913	10.00%
Installation	WatchGuard	Systems Integration - As - a - Service	914	0.00%
IDEN	iDEN System Equipment	Harmony	916	10.00%
Astro Subscribers	XTS/XTL	Bosch Subscriber	917	10.00%
Astro Subscribers	XTS/XTL	Bosch Tunnel	920	10.00%
Professional Commercial Radio	Subscriber	Waris	921	10.00%
Mobiles	Mobile Stations	CM200/CM300	922	20.00%
Service	Hardware Maintenance	LTE Device SFS Essential	923	0.00%
Astro Subscribers	XTS/XTL	Bosch Railway Subscriber	925	10.00%

Tetra Subscriber	Portable Radios	Tetra TCR1000	928	10.00%
Service	Maintenance	Services	929	0.00%
IDEN	Noncore	C18	932	10.00%
Tetra Subscriber	Legacy Equipment	Tetra CM5000	933	10.00%
Service	Hardware Maintenance	Intelligent Optimization	936	0.00%
Other	Sector Equipment	WSTS IFIND	937	10.00%
Tetra Subscriber	Mobile Radio	Tetra MTM5000	938	10.00%
Tetra Subscriber	Legacy Equipment	Tetra MTC100	939	10.00%
Pagers/Receiver	Pagers/Receiver	Minitor Parts	940	15.00%
Pagers/Receiver	Pagers/Receiver	Infrastructure	941	15.00%
Service	Hardware Maintenance	LTE System Essential	941	0.00%
Service	ILPS Service	Professional Services Adoption	942	0.00%
Service	Hardware Maintenance	Training	943	0.00%
Other	Segment OV	RPG - MCC	945	10.00%
Tetra Subscriber	Legacy Equipment	Tetra TOM100	946	10.00%
Fixed Wireless	Fixed Wireless	Broadband Peripherals	947	15.00%
Service	Hardware Maintenance	Local System Repair	948	0.00%
Professional Commercial Radio	Subscriber	VZ Series	951	10.00%
IDEN	IDEN System Equipment	Parts For Armadillo Repair Services	956	0.00%
Service	Hardware Maintenance	PCR Device Repair	959	0.00%
Dropship	ASTRO System Dropship	TUT	963	10.00%
Warranty	Additional Warranty	Additional video warranty	964	0.00%
Infrastructure	ASTRO System Infrastructure	Private System Release	967	10.00%
Dropship	NG911 Equipment	Video NG911 Dropship	968	10.00%
Service	Security Update	ASTRO Security Update Service (SUS)	969	0.00%
Service	Hardware Maintenance	Tetra SUS Patching	970	0.00%
Service	Hardware Maintenance	TETRA Network Performance	971	0.00%
Service	Hardware Maintenance	ASTRO Network Performance	972	0.00%
Other	Other Accessories	International Sales ELIM	974	10.00%
Professional Commercial Radio	Mobile Radio	Maxtrac Digital	977	10.00%
Service	Hardware Maintenance	T&M Device Repair	978	0.00%
Dropship	ASTRO System Dropship	Third Party Astro Data Applications	980	0.00%
CAD Equipment	Computer Aided Dispatch	CAD	981	5.00%
IDEN	Network Equipment	Software Solutions Team	982	10.00%
Maintenance	Maintenance	CAD	983	0.00%
Service	ICC Services	NET RMS Maintenance	983	0.00%
LTE	LTE	Local Technical Support	984	0.00%
Service	Hardware Maintenance	Software Installs	984	0.00%
LTE	LTE	CSI Material	985	0.00%
Public Safety	ICC System Equipment	PSA System	985	10.00%
Parts	Hardware Maintenance	Legacy Subscriber	986	10.00%
Parts	Energy	Saturn Buy Sell	987	10.00%
Service	Subcontract	Non-MSI Serviceable Item	988	0.00%
LTE	LTE	Network Airtime	989	0.00%
Service	ASTRO Managed Services	Astro (&MOTOTRBO) Network Ownership	989	0.00%

APPENDIX D

TO DIR CONTRACT NUMBER DIR-TSO-4101

COMMUNICATIONS SYSTEM AGREEMENT

This Appendix D to DIR Contract No. DIR-TSO-4101 is between Motorola Solutions, Inc. ("Motorola") and _____ ("Customer") and both enter into this "Agreement" intending that Customer will purchase and Motorola will sell the System, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS

The exhibits listed below are incorporated into and made a part of this Appendix D to DIR Contract number DIR-TSO-4101. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibit.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	Motorola "System Acceptance Certificate"

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 2.1. "Acceptance Tests" means those tests described in the Acceptance Test Plan provided by Motorola.
- 2.2. "Administrative User Credentials" means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.
- 2.3. "Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).
- 2.4. "Confidential Information" means, to the extent allowed under the Texas Public Information Act, any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.
- 2.5. "Contract Price" means the price for the System in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101, excluding applicable sales or similar taxes and freight charges.
- 2.6. "Effective Date" means that date upon which the last Party executes this Agreement.
- 2.7. "Equipment" means the equipment that Customer purchases from Motorola under DIR Contract number DIR-TSO-4101 and this Agreement. Equipment that is part of the System will be described in an Equipment List provided by Motorola to DIR Customer.
- 2.8. "Force Majeure" is defined in Appendix A, Section 11.C of DIR Contract number DIR-TSO-4101.
- 2.10. "Motorola Software" means Software that Motorola or its affiliated company owns.

- 2.11. "Non-Motorola Software" means Software that another party owns.
- 2.12. "Open Source Software" (also called "freeware" or "shareware") means software with either freely obtainable source code, license for modification, or permission for free distribution.
- 2.13. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.
- 2.14. "Software" means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.
- 2.15. "Specifications" means the functionality and performance requirements that are described in the Technical and Implementation Documents.
- 2.16. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.
- 2.17. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in the Technical and Implementation Documents.
- 2.18. "System Acceptance" means the Acceptance Tests have been successfully completed.
- 2.19. "Warranty Period" means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first.

Section 3 SCOPE OF AGREEMENT AND TERM

- 3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with DIR Contract number DIR-TSO-4101 and this Agreement. Customer will perform its contractual responsibilities in accordance with DIR Contract number DIR-TSO-4101 and this Agreement.
- 3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a written change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.
- 3.3. **TERM.** Unless terminated in accordance with other provisions of DIR Contract number DIR-TSO-4101 or this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, whichever occurs last. DIR Contract No. DIR-TSO-4101 is for an initial one year term and three (3) one (1) year renewal options which may be exercised by Vendor's issuance of thirty (30) days advanced written notice and Customer's concurrence prior to the then-effective expiration date (each a "Renewal Term").
- 3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the Effective Date, Customer may order additional Equipment or Software if it is then available. Each order must refer to DIR Contract number DIR-TSO-4101 and this Agreement and must specify the pricing and delivery terms in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101. DIR Contract number DIR-TSO-4101 and the applicable provisions of this Agreement will govern the purchase and sale of the additional Equipment or Software. Invoicing and Payment shall be in accordance with Section 8.B and Section 8.C of DIR Contract number DIR-TSO-4101. Alternatively, Customer may register with

and place orders through Motorola Online ("MOL"), and DIR Contract number DIR-TSO-4101 and this Agreement will be the "Underlying Agreements" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

3.5. **MAINTENANCE SERVICE.** During the Warranty Period, in addition to warranty services, Motorola will provide maintenance services for the Equipment and support for the Motorola Software for other services and support in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101. If Customer wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services for the Equipment either during the Warranty Period or after the Warranty Period, the description of and pricing for the services shall be in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101. If Customer wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101. Unless otherwise agreed by DIR and Motorola in writing, the terms and conditions applicable to those maintenance, support or software subscription services will be in accordance with DIR Contract number DIR-TSO-4101 and Appendix E, Technical and Maintenance Service Terms and Conditions, together with the appropriate statement(s) of work.

3.6. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with Exhibit A, Software License Agreement, of this Appendix D to DIR Contract number DIR-TSO-4101. Customer hereby accepts and agrees to execute and abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **SUBSTITUTIONS.** To the extent allowable by DIR Contract number DIR-TSO-4101, and at no additional cost to Customer, Motorola may substitute any Equipment, Software, or Services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the DIR Customer. Any substitution will be reflected in a change order.

3.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** Only Software or Services that are listed in Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101 are available under the contract. DIR Contract number DIR-TSO-4101 does not include Optional Equipment or Software.

Section 4 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule provided by Motorola to the Customer. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 5 CONTRACT PRICE, PAYMENT AND INVOICING

5.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$_____. Pricing is in accordance with the discounts in Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101. If

applicable, a pricing summary is included with the Payment Schedule. To the extent allowable by DIR Contract number DIR-TSO-4101, Motorola has priced the services, Software, and Equipment as an integrated system. A reduction in Software or Equipment quantities, or services, may affect the overall Contract Price, including discounts if applicable.

5.2. **INVOICING AND PAYMENT.** Invoicing and Payment shall be handled in accordance with Appendix A, Section 8 of DIR Contract number DIR-TSO-4101.

5.3. **FREIGHT, TITLE, AND RISK OF LOSS.** Freight, Title, and Risk of Loss shall be handled in accordance with DIR Contract number DIR-TSO-4101.

5.4. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:

The address which is the ultimate destination where the Equipment will be delivered to Customer is:

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

Customer may change this information by giving written notice to Motorola.

Section 6 SITES AND SITE CONDITIONS

6.1. **ACCESS TO SITES.** In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager, all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

6.2. **SITE CONDITIONS.** Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of Electronic Industries Alliance (EIA) standard RS-222 for antenna mast structural integrity in effect on the Effective Date.

6.3. **SITE ISSUES.** If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will mutually select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

Section 7 TRAINING

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required.

Section 8 SYSTEM ACCEPTANCE

8.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Customer at least ten (10) calendar days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan to be provided by Motorola to the Customer.

8.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

8.3. BENEFICIAL USE. Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

8.4. FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Section 9 REPRESENTATIONS AND WARRANTIES

9.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

9.2. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

9.3. MOTOROLA SOFTWARE WARRANTY. During the Warranty Period, Motorola warrants the Motorola Software, in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes within

Customer's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

9.4. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

9.5. WARRANTY CLAIMS. To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates in accordance with Appendix C of the DIR Contract DIR-TSO-4101. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

9.6. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

9.7. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DELAYS

10.1. FORCE MAJEURE. Force Majeure shall be handled in accordance with Appendix A, Section 11.C of DIR Contract number DIR-TSO-4101.

10.2. PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER. If Customer (including its other contractors) delays the Performance Schedule, a modified Performance Schedule that is mutually agreeable to both Parties shall be made at no cost to either Party except for those costs which are reimbursable for services already rendered.

Section 11 DISPUTES

Disputes shall be handled in accordance with Appendix A, Section 11.A of DIR Contract number DIR-TSO-4101.

11.1. GOVERNING LAW. This Agreement will be governed by the laws of the State of Texas. Nothing in this Appendix D or Exhibit thereto shall be construed to waive the State's sovereign immunity.

11.2. CONFIDENTIALITY. To the extent allowed under the Texas Public Information Act, all negotiation communications will be treated as confidential and disputes will be handled in accordance with Appendix A, Section 10.H of DIR Contract number DIR-TSO-4101.

Section 12 DEFAULT AND TERMINATION

DEFAULT BY A PARTY. Default and Termination shall be handled in accordance with Appendix A, Section 11.B of DIR Contract DIR-TSO-4101.

Section 13 INDEMNIFICATION AND INFRINGEMENTS

13.1. INDEMNIFICATION AND INFRINGEMENTS. Indemnification and Infringements shall be handled in accordance with Appendix A, Section 10.A of DIR Contract number DIR-TSO-4101.

13.2. PATENT AND COPYRIGHT INFRINGEMENT. Patent and Copyright Infringement shall be handled in accordance with Section 10.A.3 of DIR Contract number DIR-TSO-4101.

Section 14 LIMITATION OF LIABILITY

Limitation of Liability shall be handled in accordance with Appendix A, Section 10.K of DIR Contract number DIR-TSO-4101.

Section 15 CONFIDENTIALITY AND PROPRIETARY RIGHTS

15.1. CONFIDENTIAL INFORMATION. To the extent allowed under the Texas Public Information Act during the term of DIR Contract number DIR-TSO-4101 and this Agreement, the parties may provide each other with Confidential Information. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent allowed under the Texas Public Information Act and by DIR Contract number DIR-TSO-4101 and this Agreement.

15.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS. Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or Related Services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Section 16 GENERAL

16.1. TAXES. Taxes will be handled in accordance with Appendix A, Section 8.E of DIR Contract number DIR-TSO-4101.

16.2. ASSIGNABILITY AND SUBCONTRACTING. Assignment will be handled in accordance with Appendix A, Section 4.D of DIR Contract number DIR-TSO-4101. Motorola may subcontract its obligations under this Agreement. Motorola may not encumber or sell its rights in any Software, without prior notice to and written consent of DIR.

16.3. WAIVER. Failure or delay by either Party to exercise a right or power under DIR Contract number DIR-TSO-4101 or this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4. SEVERABILITY. If a court of competent jurisdiction renders any part of DIR Contract number DIR-TSO-4101 or this Agreement invalid or unenforceable, that part will be severed and the remainder of DIR Contract number DIR-TSO-4101 and this Agreement will continue in full force and effect.

16.5. INDEPENDENT CONTRACTORS. Each Party will perform its duties under DIR Contract number DIR-TSO-4101 and this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6. HEADINGS AND SECTION REFERENCES. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. DIR Contract number DIR-TSO-4101 and this Agreement will be fairly interpreted in accordance with their terms and conditions and not for or against either Party.

16.7. ENTIRE AGREEMENT. DIR Contract number DIR-TSO-4101 and this Agreement, including all appendices and exhibits thereto constitute the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. A facsimile copy or computer image, such as a PDF or tiff image, or a signature shall be treated as and shall have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of DIR and Motorola. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.8. NOTICES. Notices shall be handled in accordance with Appendix A, Section 12 of DIR contract number DIR-TSO-4101.

16.9. COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC

license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

16.10. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

16.11. **ADMINISTRATOR LEVEL ACCOUNT ACCESS.** Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant Administrative User Credentials to those personnel with the training or experience to correctly use the access. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made by an Administrative User may impact Motorola's ability to perform its obligations under DIR Contract number DIR-TSO-4101 and this Agreement or to Appendix E, Technical and Maintenance Service Terms and Conditions of DIR Contract number DIR-TSO-4101. In such cases, a revision to the Statement of Work may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101 for resolving the issue.

16.12. **SURVIVAL OF TERMS.** Survival shall be handled in accordance with Appendix A, Section 4.E of DIR Contract number. DIR-TSO-4101.

In the event of a conflict in Terms between this Agreement and DIR Contract No. DIR-TSO-4101, the Terms of DIR Contract No. DIR-TSO-4101 shall take precedence.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

DIR Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

END OF APPENDIX D TO DIR CONTRACT NUMBER DIR-TSO-4101

EXHIBIT A OF APPENDIX D TO DIR CONTRACT NUMBER DIR-TSO-4101

MOTOROLA SOFTWARE LICENSE AGREEMENT

This Exhibit A Motorola Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and _____ ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary software or products containing embedded or pre-loaded proprietary software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the proprietary software and affiliated documentation.

Section 3 GRANT OF LICENSE

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is

provided under this Agreement; and (ii) identify the Open Source Software (or specify where that license may be found).

3.3 TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERSEDES THE SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4 Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this

Agreement. Except as provided by DIR Contract No. DIR-TSO-4101, all intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. Unless otherwise stated in the Primary Agreement, the commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Except as provided by DIR Contract No. DIR-TSO-4101, Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software. Notwithstanding, any warranty provided by a copyright owner in its standard license terms will flow through to Licensee for third party software provided by Motorola.

6.2 Except as provided by DIR Contract No. DIR-TSO-4101, Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. Except as provided by DIR Contract No. DIR-TSO-4101, the express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Except as provided by DIR Contract No. DIR-TSO-4101, Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than CPS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

SECTION 9 COMMERCIAL COMPUTER SOFTWARE

9.1 *This Section 9 only applies to U.S. Government end users.* The Software, Documentation and updates are commercial items as that term is defined at 48 C.F.R. Part 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. Part 252.227-7014(a)(1) and 48 C.F.R. Part 252.227-7014(a)(5), and used in 48 C.F.R. Part 12.212 and 48 C.F.R. Part 227.7202, as applicable. Consistent with 48 C.F.R. Part 12.212, 48 C.F.R. Part 252.227-7015, 48 C.F.R. Part 227.7202-1 through 227.7202-4, 48 C.F.R. Part 52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, the Software, Documentation and Updates are distributed and licensed to U.S. Government end users: (i) only as commercial items, and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions contained herein.

9.2 If Licensee is licensing Software for end use by the United States Government or a United States Government agency, Licensee may transfer such Software license, but only if: (i) Licensee transfers all copies of such Software and Documentation to such United States Government entity or interim transferee, and (ii) Licensee has first obtained from the transferee (if applicable) and ultimate end user an enforceable end user license agreement containing restrictions substantially identical to the ones contained in this Agreement. Except as stated in the foregoing, Licensee and any transferee(s) authorized by this subsection 9.2 may not otherwise use or transfer or make available any Motorola software to any third party nor permit any party to do so.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

13.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. COMPLIANCE WITH LAWS. Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3 FUTURE REGULATORY REQUIREMENTS. The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

13.4. ASSIGNMENTS AND SUBCONTRACTING. Reserved.

13.5. GOVERNING LAW. Reserved.

13.6. THIRD PARTY BENEFICIARIES. This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.7. SURVIVAL. Sections 4, 5, 6.4, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.8. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter. The parties further agree that DIR Contract No. DIR-TSO-4101 prevails over this Exhibit and the Primary Agreement.

13.9. SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

**EXHIBIT B OF APPENDIX D TO DIR CONTRACT NUMBER DIR-TSO-4101
SYSTEM ACCEPTANCE CERTIFICATE**

Customer Name: _____

Project Name: _____

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

Customer Representative:

Motorola Representative:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

FINAL PROJECT ACCEPTANCE:

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative:

Motorola Representative:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX E
TO DIR CONTRACT NUMBER DIR-TSO-4101
TECHNICAL & MAINTENANCE SERVICE TERMS AND CONDITIONS

This Appendix E to DIR Contract number DIR-TSO-4101 is between Motorola Solutions, Inc. ("Motorola"), and _____ ("DIR Customer"), together known as "the Parties". Both Parties hereby agree as follows:

Section 1 APPLICABILITY

DIR Contract number DIR-TSO-4101 and these Service Terms and Conditions apply to service contracts whereby Motorola will provide to DIR Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2 DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means DIR Contract number DIR-TSO-4101 and this Appendix E, Technical & Maintenance Service Terms and Conditions.

2.2. "Equipment" means the equipment that is specified in any attachment that is in accordance with DIR Contract number DIR-TSO-4101.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3 ACCEPTANCE

DIR Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4 SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At DIR Customer's request, Motorola may also provide additional services at costs in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If DIR Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101 after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, DIR Customer will provide a complete serial and model number list of the Equipment. DIR Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. DIR Customer's obligation to pay

Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. DIR Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment or remove that Equipment from the Agreement. Pricing shall be in accordance with Appendix C, Pricing Index of DIR Contract number DIR-TSO-4101 throughout the term of the contract.

4.7. DIR Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to DIR Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5 EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6 TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at DIR Customer's location, DIR Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. DIR Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, DIR Customer agrees to reimburse Motorola for those charges and expenses.

Section 7 DIR CUSTOMER CONTACT

DIR Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable DIR Customer's personnel to maintain contact, as needed, with Motorola.

Section 8 INVOICING AND PAYMENT

8.1. Invoicing will be handled in accordance with Appendix A, Section 8.1 of DIR Contract number DIR-TSO-4101.

8.2. Payment will be handled in accordance with Appendix A, Section 8.J of DIR Contract number DIR-TSO-4101.

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, DIR Customer's sole remedy under the warranty is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DEFAULT/TERMINATION

10.1. Default shall be handled in accordance with Appendix A, Section 10.A of DIR Contract number DIR-TSO-4101.

10.2. Termination shall be handled in accordance with Appendix A, Section 11.B. of DIR Contract number DIR-TSO-4101.

Section 11 LIMITATION OF LIABILITY

Limitation of Liability will be handled in accordance with Appendix A, Section 10.K of DIR Contract number DIR-TSO-4101.

Section 12 EXCLUSIVE TERMS AND CONDITIONS

12.1. DIR Contract number DIR-TSO-4101 and this Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by DIR and Motorola authorized representatives.

12.2. DIR Customer agrees to reference DIR Contract number DIR-TSO-4101 and this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a DIR Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. To the extent allowable by the Texas Public Information Act, and the DIR Customer's records retention obligations: 1) any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to DIR Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request; 2) DIR Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this agreement. "Confidential Information" means all information consistent with the fulfillment of this agreement that is (i) disclosed under this agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this agreement.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

DIR Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of DIR Customer in any governmental matters.

Section 15 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. DIR Customer will safeguard all such property while it is in DIR Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by DIR Customer for Motorola's use without charge and may be removed from DIR Customer's premises by Motorola at any time without restriction (but this does not afford Motorola any right to access DIR Customer's facilities except with the consent of DIR Customer).

Section 16 GENERAL TERMS

16.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

16.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

16.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

16.4. Force Majeure shall be handled in accordance with Appendix A, Section 11.C of DIR Contract No. DIR-TSO-4101.

16.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.6. Assignment shall be handled in accordance with Appendix A, Section 4.D of DIR Contract number DIR-TSO-4101.

16.7. DIR Contract number DIR-TSO-4101 is for an initial one year term and three (3) one (1) year renewal options which may be exercised by Vendor's issuance of thirty (30) days advanced written notice and Customer's concurrence prior to the then-effective expiration date (each a "Renewal Term").

16.8. DIR Customer will not be liable for any costs, fees or penalties in the event that Motorola provides Services after the termination or expiration of this Agreement without an executed renewal Agreement.

16.9. In the event of a conflict in Terms between this Agreement and DIR Contract number DIR-TSO-4101, the Terms of DIR Contract number DIR-TSO-4101 shall take precedence

END OF APPENDIX E TO DIR CONTRACT NUMBER DIR-TSO-4101

Appendix F to DIR-TSO-4101

SUBSCRIPTION SERVICES AGREEMENT

Motorola Solutions, Inc. ("Motorola") and _____ ("Customer") enter into this Subscription Services Agreement ("Agreement") pursuant to which Customer will purchase and Motorola will sell a subscription to access the subscription services described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties."

1. DEFINITIONS

Capitalized terms used in this Agreement have the meanings set forth below. Any reference to the purchase or sale of software or other Intellectual Property shall mean the sale or purchase of a license or sublicense to use such software or Intellectual Property in accordance with this Agreement.

"Administrator" means Customer's designated system administrator who receives administrative logins for the Subscription Services and issues access rights to Customer's Users.

"Anonymized" means having been stripped of any personal or correlating information revealing original source or uniquely identifying a person or entity.

"Confidential Information" means, to the extent allowed under the Texas Public Information Act, any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

"Customer Data" means Native Data provided by Customer to Motorola hereunder to be processed and used in connection with the Subscription Services. Customer Data does not include data provided by third parties and passed on to Motorola.

"Deliverables" means all written information (such as reports, analytics, Solution Data, specifications, designs, plans, drawings, or other technical or business information) that Motorola prepares for Customer in the performance of the Services and is obligated to provide to Customer pursuant to the applicable Statement of Work. The Deliverables, if any, are more fully described in the Statement of Work.

"Documentation" means the technical materials provided by Motorola to Customer in hard copy or electronic form describing the use and operation of the Solution and Software, including any technical manuals, but excluding any sales, advertising or marketing materials or proposals.

"Effective Date" means that date upon which the last Party executes this Agreement.

"Feedback" means comments or information, in oral or written form, given to Motorola by Customer, in connection with or relating to the Solution and Subscription Services.

"Force Majeure" is defined in Appendix A, Section 11.C of DIR Contract number DIR-TSO-4101.

“Licensed Product” means 1) Software, whether hosted or installed at Customer's site, 2) Documentation; 3) associated user interfaces; 4) help resources; and 5) any related technology or other services made available by the Solution.

“Native Data” means data that is created solely by Customer or its agents.

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, ideas and concepts, moral rights, processes, methodologies, tools, techniques, and other intellectual property rights.

“Software” means the Motorola owned or licensed off the shelf software programs delivered as part of the Licensed Products used to provide the Subscription Services, including all bug fixes, updates and upgrades.

“Solution” means collectively, the Software, servers and any other hardware or equipment operated by Motorola and used in conjunction with the Subscription Services.

“Solution Data” means Customer Data that is transformed, altered, processed, aggregated, correlated or operated on by Motorola, its vendors or other data sources and data that has been manipulated or retrieved using Motorola know-how to produce value-added content that is made available to Customer with the Solution and Subscription Services.

“Statement of Work” If included, the Statement of Work (“SOW”) describes the Subscription Services, Deliverables (if any), Licensed Products and Solution that Motorola will provide to Customer under this Agreement, and the other work-related responsibilities that the parties owe to each other. The Statement of Work may contain a performance schedule.

“Subscription Services” means those subscription services to be provided by Motorola to Customer under this Agreement, the nature and scope of which are more fully described in the Documentation, proposal, or SOW, as applicable.

“Users” means Customer's authorized employees or other individuals authorized to utilize the Subscription Services on behalf of Customer and who will be provided access to the Subscription Services by virtue of a password or equivalent security mechanism implemented by Customer.

2. SCOPE

2.1 Subscription Services. Motorola will provide to Customer the Subscription Services and Deliverables (if any). As part of the Subscription Services, Motorola will allow Customer to use the Solution described in the Statement of Work, Documentation, or proposal, as applicable. Any Subscription Services from Motorola's CommandCentral portfolio will also be subject to the additional terms set forth in Section 5 of this Agreement. Motorola and Customer will perform their respective responsibilities as described in this Agreement, any applicable SOW, Documentation, and the proposal.

2.2 To enable Motorola to perform the Subscription Services, Customer will provide to Motorola reasonable access to relevant Customer information, personnel, systems, and office space when Motorola's employees are working on Customer's premises, and other general assistance. Further, if any equipment is installed or stored at Customer's location in order to provide the Services, Customer will provide, at no charge, a non-hazardous environment with adequate shelter, heat, light, power, security, and full and free access to the equipment.

2.3 If the Statement of Work contains assumptions that affect the Services or Deliverables, Customer will verify that they are accurate and complete. Any information that Customer provides to Motorola

concerning the Services or Deliverables will be accurate and complete in all material respects. Customer will make timely decisions and obtain any required management and third party approvals or consents that are reasonably necessary for Motorola to perform the Services and its other duties under this Agreement. Unless the Statement of Work states the contrary, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions and Customer-provided information, decisions and approvals described in this paragraph.

2.4 Customer may request changes to the Services. If Motorola agrees to a requested change, the change must be confirmed in writing and signed by authorized representatives of both parties. A reasonable price adjustment will be made if any change affects the time of performance or the cost to perform the Services.

2.5 During the term of this Agreement and for twelve (12) months thereafter, each party will not actively solicit the employment of any personnel of the other party who is involved directly with procuring or providing any of the Services.

3. TERMS AND CONDITIONS

The terms of DIR Contract Number DIR-TSO-4101 combined with the terms of this agreement will govern the products and services offered pursuant to this Agreement. To the extent there is a conflict between the terms and conditions of the DIR contract and the terms and conditions of the the Agreement, DIR contract takes precedence.

3.1 Subscription Services Term.

3.1.1 Except for Command Central Services and unless a different Term is set forth in the SOW or proposal, the Term of this Agreement begins on the Effective Date and continues each month until expiration or termination in accordance with DIR Contract Number DIR-TSO-4101.

3.1.2 For Command Central Subscription Services, Customer may select a Subscription Services Term of one year, three, years, or five years ("Initial Term"). Unless a different duration is set forth in the Statement of Work or proposal and unless terminated in accordance with the provisions DIR Contract Number DIR-TSO-4101, the Term of this Agreement begins on the Effective Date and continues for one (1), three (3) or five (5) year(s), as applicable. Following the Initial Term, this Agreement may be renewed in accordance with DIR Contract Number DIR-TSO-4101. The terms and conditions of DIR Contract Number DIR-TSO-4101 and the Agreement and will govern any renewal periods.

3.2 **Motorola Access.** To enable Motorola to perform the Subscription Services, Customer will provide to Motorola reasonable access to relevant Customer information, personnel, systems, and office space when Motorola's employees are working on Customer's premises, and other general assistance. Further, if any equipment is installed or stored at Customer's location in order to provide the Subscription Services, Customer will provide, at no charge, a non-hazardous environment with adequate shelter, heat, light, power, security, and full and free access to the equipment.

3.3 **Customer Information.** If the Documentation, Statement of Work, proposal, or other related documents contain assumptions that affect the Subscription Services or Deliverables, Customer will verify that they are accurate and complete. Any information that Customer provides to Motorola concerning the Subscription Services or Deliverables will be accurate and complete in all material respects. Customer will make timely decisions and obtain any required management and third party approvals or consents that are reasonably necessary for Motorola to perform the Subscription Services and its other duties

under this Agreement. Unless the Statement of Work states the contrary, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions and Customer-provided information, decisions and approvals described in this paragraph.

3.4 Risk of Loss. If any portion of the Solution resides on Customer premises or is under Customer's control in any way, Customer shall at all times exercise reasonable care in using and maintaining the Solution in accordance with Motorola's instructions for proper use and care. Risk of loss to any equipment in Customer's possession will reside with Customer until removed by Motorola or its agent or returned by Customer. Customer will be responsible for replacement costs of lost or damaged equipment, normal wear and tear excluded.

3.5 Equipment Title. Unless stated differently in a Statement of Work, title to any equipment provided to Customer under this Agreement remains vested in Motorola at all times.

3.6 Enable Users. Customer will properly enable its Users to use the Subscription Services, including providing instructions for use, labeling, required notices, and accommodation pursuant to applicable laws, rules, and regulations. Unless otherwise agreed in the SOW, Customer will train its Users on proper operation of the Solution and Licensed Products. Customer agrees to require Users to acknowledge and accept the limitations and conditions of use of the Licensed Products in this Agreement prior to allowing Users to access or use Subscription Services.

3.7 Non-preclusion. If, as a result of the Subscription Services performed under this Agreement, Motorola recommends that Customer purchase products or other services, nothing in this Agreement precludes Motorola from participating in a competitive opportunity or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement or other laws, regulations, or policies.

3.8 Subscription Fees.

3.8.1 Fees and payments shall be in accordance with DIR Contract Number DIR-TSO-4101.

3.8.2 Fees and payments shall be in accordance with DIR Contract Number DIR-TSO-4101.

3.8.3 TAXES. Taxes shall be in accordance with Appendix A, Section 8.E of DIR Contract number DIR-TSO-4101.

3.9 ACCEPTANCE; SCHEDULE; FORCE MAJEURE

3.9.1 The Licensed Products will be deemed accepted upon the delivery of usernames and passwords to Customer. If usernames and passwords have been issued to Customer prior to the Effective Date, the Licensed Products will be deemed accepted on the Effective Date.

3.9.2 All Subscription Services will be performed in accordance with the performance schedule included in the Statement of Work, or if there is no performance schedule, within a reasonable time period.

3.9.3 Force Majeure shall be in accordance with Appendix A, Section 11.C of DIR Contract number DIR-TSO-4101.

3.10 LIMITED LICENSE

3.10.1 LICENSED PRODUCTS. Use of the Licensed Products by Customer and its Users is strictly limited to use in connection with the Solution or Subscription Services during the Term. Customer and Users will refrain from, and will require others to refrain from, doing any of the following with regard to the Software in the Solution: (i) directly or indirectly, by electronic or other means, copy, modify, or translate the Software; (ii) directly or indirectly, by electronic or other means, reproduce, reverse engineer, distribute,

sell, publish, commercially exploit, rent, lease, sublicense, assign or otherwise transfer or make available the Licensed Products or any part thereof to any third party, or otherwise disseminate the Licensed Product in any manner; (iii) directly or indirectly, by electronic or other means, modify, decompile, or disassemble the Software or part thereof, or attempt to derive source code from the Software; or (iv) remove any proprietary notices, labels, or marks on the Software or any part of the Licensed Products. Motorola Solutions reserves all rights to the Software and other Licensed Products not expressly granted herein. Customer agrees to abide by the copyright laws of the United States and all other relevant jurisdictions, including without limitation, the copyright laws where Customer uses the Solution. Customer agrees to immediately cease using the Solution if it fails to comply with this paragraph or any other part of this Agreement.

3.10.2 Regardless of any contrary provision in the Agreement, Motorola or its third party providers own and retain all of their respective Proprietary Rights in the Software, Solution, and Licensed Product. Nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing Services to Customer remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. No custom development work is to be performed under this Agreement.

3.11 DATA AND FEEDBACK

3.11.1 Solution Data. To the extent permitted by law, Motorola, its vendors and licensors are the exclusive owners of all right, title, and interest, in and to the Solution Data, including all intellectual property rights therein. Motorola grants Customer a personal, royalty-free, non-exclusive license to: (i) access, view, use, copy, and store the Solution Data for its internal business purposes and, (ii) when specifically permitted by the applicable Statement of Work, publish Solution Data on its websites for viewing by the public.

3.11.2 Customer Data. To the extent permitted by law, Customer retains ownership of Customer Data. Customer grants Motorola and its subcontractors a personal, royalty-free, non-exclusive license to use, host, cache, store, reproduce, copy, modify combine, analyze, create derivatives from, communicate, transmit, publish, display, and distribute such Customer Data for the purpose of providing the Subscription Services to Customer, and end users.

3.11.3 Feedback. Any Feedback given by Customer is entirely voluntary and, even if designated as confidential, will create no confidentiality obligation for Motorola. Motorola is free to use, reproduce, license or otherwise distribute and exploit the Feedback without any obligation to Customer. Customer acknowledges that Motorola's receipt of the Feedback does not imply or create recognition by Motorola of either the novelty or originality of any idea. The parties further agree that all fixes, modifications and improvement to the Licensed Product or Subscription Service conceived of or made by Motorola that are based, either in whole or in part, on the Feedback are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements to the Licensed Product or Subscription Service will vest solely in Motorola.

3.12 WARRANTY

3.12.1 THE SOLUTION AND SUBSCRIPTION SERVICES ARE PROVIDED "AS IS". MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. Customer acknowledges that the Deliverables may contain recommendations, suggestions or advice from Motorola to Customer (collectively, "Recommendations"). Motorola makes no warranties concerning those Recommendations, and Customer alone accepts responsibility for choosing whether and how to implement the Recommendations and the results to be realized from implementing them.

3.12.2 NO GUARANTEE. Customer acknowledges that functionality of the Solution as well as availability and accuracy of Solution Data is dependent on many elements beyond Motorola's control, including databases managed by Customer or third parties and Customer's existing equipment, software, and Customer Data. Therefore, Motorola does not guarantee availability or accuracy of data, or any

minimum level of coverage or connectivity. Interruption or interference with the Subscription Services or Solution may periodically occur. Customer agrees not to represent to any third party that Motorola has provided such guarantee.

3.13 DISCLAIMERS

3.13.1 **EXISTING EQUIPMENT AND SOFTWARE.** If Customer's existing equipment and software is critical to operation and use of the Subscription Services, Customer is solely responsible for supporting and maintaining Customer's existing equipment and software. Connection to or interface with Customer's existing equipment and software may be required to receive Subscription Services. Any failures or deficiencies of Customer's existing equipment and software may impact the functionality of the Solution and the Subscription Services to be delivered. Any vulnerabilities or inefficiencies in Customer's system may also impact the Solution and associated Subscription Services.

3.13.2 **PRIVACY.** Customer bears sole responsibility for its compliance with any laws and regulations regarding tracking; location based services; gathering, storing, processing, transmitting, using or misusing; or otherwise handling personally identifiable information ("PII"), including information about Users of the Solution or citizens in the general public. Further, it is Customer's sole responsibility to comply with any laws or regulations prescribing the measures to be taken in the event of breach of privacy or accidental disclosure of any PII. Enacting and enforcing any internal privacy policies for the protection of PII, including individual disclosure and consent mechanisms, limitations on use of the information, and commitments with respect to the storage, use, deletion and processing of PII in a manner that complies with applicable laws and regulations will be Customer's sole responsibility. Motorola will not evaluate the sufficiency of such policies and disclaims any responsibility or liability for privacy practices implemented by Customer, or lack thereof. Customer acknowledges and agrees that Subscription Services and the Solution are not designed to ensure individual privacy. Customer will inform Users that the Solution may enable visibility to PII, as well as physical location of individuals. Further, if the Solution or Subscription Services are available to the general public pursuant to this Agreement, Customer will provide the appropriate privacy notification. Neither Motorola nor Customer can provide any assurance of individual privacy in connection with the Solution. Further, Customer is solely responsible for determining whether and how to use data gathered from social media sources for the purpose of criminal investigations or prosecution.

3.13.3 **SOCIAL MEDIA.** If Customer purchases Subscription Services that utilize social media, Customer acknowledges and agrees that such Subscription Services are not designed to ensure individual privacy. In such case, Customer will inform Users that the Solution and Subscription Services may enable visibility to PII, as well as physical location of individuals. Further, if the Solution or Subscription Services are available to the general public pursuant to this Agreement, Customer will provide the appropriate privacy notification. Neither Motorola nor Customer can provide any assurance of individual privacy in connection with the Solution or Subscription Services utilizing social media. Further, Customer is solely responsible for determining whether and how to use data gathered from social media sources for the purpose of criminal investigations or prosecution.

3.13.4 Motorola reserves the right to discontinue service at any time without notice to Users that misuse the Service, jeopardize the Licensed Product or public safety in any way.

3.14 LIMITATION OF LIABILITY

Limitation of Liability shall be in accordance with Appendix A, Section 10.K of DIR Contract number DIR-TSO-4101

3.15 DEFAULT AND TERMINATION

3.15.1 Default shall be handled in accordance with Appendix A, Section 11.A of DIR Contract number DIR-TSO-4101.

3.15.2 Termination shall be handled in accordance with Appendix A, Section 11.B of DIR Contract number DIR-TSO-4101.

3.15.3 Five Year Term. Upon expiration and non-renewal of a 5-year subscription, Title to the equipment will automatically transfer to Customer upon the subscription expiration date.

3.16 DISPUTES

Dispute resolution shall be handled in accordance with Appendix A, Section 11.A of DIR Contract number DIR-TSO-4101.

Section 4 CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS

4.1. CONFIDENTIAL INFORMATION.

4.1.1. During the term of this Agreement, the parties may provide each other with Confidential Information. Licensed Products, and all Deliverables will be deemed to be Motorola's Confidential Information. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction, or by applicable rule or statute; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information (except as reasonably necessary for the performance of this Agreement or pursuant to the license granted below); take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but those precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement or pursuant to the license granted immediately below.

4.1.2. The disclosing Party owns and retains all of its Proprietary Rights in and to its Confidential Information, except the disclosing Party hereby grants to the receiving Party, for the term of Motorola's and Customer's contractual agreement, the limited right and license, on a non-exclusive, irrevocable, and royalty-free basis, to use the Confidential Information for any lawful, internal business purpose in the manner and to the extent permitted by this Agreement.

4.2. PRESERVATION OF PROPRIETARY RIGHTS.

Customer acknowledges that the Licensed Products and any associated Documentation, data, and methodologies used in providing Services are proprietary to Motorola or its third party licensors and contain valuable trade secrets. In accordance with this Agreement, Customer and its employees shall treat the Solution and all Proprietary Rights as Confidential Information and will maintain the strictest confidence.

Each Party owns and retains all of its Proprietary Rights that exist on the Effective Date. Motorola owns and retains all Proprietary Rights that are developed, originated, or prepared in connection with providing the Deliverables or Services to Customer, and this Agreement does not grant to Customer any shared development rights. At Motorola's request and expense, Customer will execute papers reasonable in number, volume and content and provide reasonable assistance to Motorola to enable Motorola to establish the Proprietary Rights. Unless otherwise explicitly stated herein, this Agreement does not restrict a Party concerning its own Proprietary Rights and is not a grant (either directly or by implication, estoppel, or otherwise) of a Party's Proprietary Rights to the other Party.

4.3 Remedies. Because Licensed Products contain valuable trade secrets and proprietary information of Motorola, its vendors and licensors, Customer acknowledges and agrees that any actual or threatened breach of this Section will constitute immediate, irreparable harm to Motorola for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. Notwithstanding anything in this Agreement to the contrary, Motorola reserves the right to pursue injunctive relief and any other appropriate remedies from state district courts in Travis County, Texas in connection with any actual, alleged, or suspected breach of Section 3, infringement, misappropriation or violation of Motorola's Property Rights, or the unauthorized use of Motorola's Confidential Information. Any such action or proceeding must be brought in state district courts in Travis County, Texas. Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative.

5. COMMAND CENTRAL PORTFOLIO - ADDITIONAL TERMS

The following additional terms will apply to Subscription Services from Motorola's Command Central Portfolio, including but not limited to Digital Evidence Management System and Body Worn Camera System.

5.1. SECURITY.

5.1.1 Motorola will maintain industry standard security measures to protect the Solution from intrusion, breach, corruption, or other security risk. During the term of Agreement, if the Solution enables access to Criminal Justice Information ("CJI"), as defined by the Criminal Justice Information Services Security Policy ("CJIS"), Motorola will provide and comply with a CJIS Security Addendum. Any additional Security measure desired by Customer may be available for an additional fee.

5.1.2 Motorola will require its personnel that access CJI to submit to a background check based on submission of FBI fingerprint cards.

5.1.3 Customer is independently responsible for establishing and maintaining its own policies and procedures and for ensuring compliance with CJIS and other security requirements that are outside the scope of the Service provided. Customer must also establish and ensure compliance with access control policies and procedures, including password security measures. Further, Customer must maintain industry standard security and protective data privacy measures. Motorola disclaims any responsibility or liability whatsoever for the security or preservation of Customer Data or Solution Data once accessed or viewed by Customer or its representatives. Motorola further disclaims any responsibility or liability whatsoever for customer's failure to maintain industry standard security and data privacy measures and controls, including but not limited to lost or stolen passwords. Motorola reserves the right to terminate the Service if Customer's failure to maintain or comply with industry standard security and control measures negatively impacts the Service, Solution, or Motorola's own security measures.

5.1.4 Both parties will maintain and follow a breach response plan consistent with the standards of their respective industries.

5.2 DATA STORAGE. Motorola will determine, in its sole discretion, the location of the stored content for CommandCentral Vault Services. All data, replications, and backups will be stored **exclusively** at a location in the Continental United States for Customers in the United States.

5.3 DATA RETRIEVAL. CommandCentral Services will leverage different types of storage to optimize the Subscription Services, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will determine the data retrieval speed. Access to content in archival storage may take up to 8 hours to be viewable.

5.4 API SUPPORT. Motorola will use commercially reasonable efforts to maintain the Application Programming Interface ("API") offered as part of the CommandCentral Services during the term of this Addendum. APIs will evolve and mature over time, requiring changes and updates. Previous versions of APIs will be supported for a minimum of a 6 month time period after new version is introduced. If support of the API is no longer a commercially reasonable option, Motorola will provide reasonable advance notification to Customer. If an API presents a security risk to the Subscription Services or the Solution, Motorola will discontinue an API without prior warning.

5.5. BODY WORN CAMERAS.

5.5.1 Smart Interface ("Si") Device Refresh: Customers who have chosen a 5-year Term for Body Worn Cameras as a Service ("BWCaaS") offering will receive a new version of the Si device 30 months from the start of the Term or as soon as a new version is available. The new version Si device must be in the same family as the previously selected model. The refresh will only include the Si device. Any carry holders, batteries or other accessories will not be refreshed. The Si devices being refreshed must be returned to Motorola within 60 days of the refreshed devices being shipped. The customer will be invoiced for any devices not returned or returned damaged or nonfunctional.

5.5.2 If Customer elects a five year or greater Term for the BWCaaS offering, Motorola will provide the Si equipment necessary to enable the BWCaaS. Accessories for the body worn cameras will not be provided and must be purchased separately, if desired.

5.5.3 Content shall be downloadable at any time through the administrative interface during the Term of the Agreement. During the Initial Term, Motorola may provide general assistance as Customer learns to download or store content. After the Initial Term, additional storage term or assistance with downloading of content may be available for an additional fee.

5.6. COMMANDCENTRAL SERVICE LEVEL TARGETS.

Commercially reasonable efforts will be made to provide monthly availability of 99.9% with the exception of maintenance windows. There are many factors beyond Motorola's control that may impact Motorola's ability to achieve this goal, including but not limited to a Force Majeure.

Additionally, Motorola will strive to meet the response time goals set forth in the table below.

RESPONSE TIME GOALS

SEVERITY LEVEL	DEFINITION	RESPONSE TIME
1	Total System Failure - occurs when the System is not functioning and there is no workaround; such as a Central Server is down or when the workflow of an entire agency is not functioning. This level is meant to represent a major issue that results in an unusable System, Subsystem, Product, or critical features. No work around or immediate solution is available.	Telephone conference within 1 Hour of initial voice notification

2	Critical Failure - Critical process failure occurs when a crucial element in the System that does not prohibit continuance of basic operations is not functioning and there is usually no suitable work-around. Note that this may not be applicable to intermittent problems. This level is meant to represent a moderate issue that limits a Customer's normal use of the System, Subsystem, Product or major non-critical features.	Telephone conference within 3 Business Hours of initial voice notification during normal business hours
3	Non-Critical Failure - Non-Critical part or component failure occurs when a System component is not functioning, but the System is still useable for its intended purpose, or there is a reasonable workaround. This level is meant to represent a minor issue that does not preclude use of the System, Subsystem, Product, or critical features.	Telephone conference within 6 Business Hours of initial notification during normal business hours
4	Inconvenience - An inconvenience occurs when System causes a minor disruption in the way tasks are performed but does not stop workflow. This level is meant to represent very minor issues, such as cosmetic issues, documentation errors, general usage questions, and product or System Update requests.	Telephone conference within 2 Standard Business Days of initial notification

5.7. MAINTENANCE

Scheduled maintenance of Command Central Solutions will be performed periodically. Motorola will make commercially reasonable efforts to notify customers a week in advance. Unscheduled and emergency maintenance may be required from time to time. Motorola will make commercially reasonable efforts to notify customers of unscheduled or emergency maintenance 24 hours in advance.

6. GENERAL

6.1 FUTURE REGULATORY REQUIREMENTS. The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Subscription Services and use of the Solution may change. Changes to existing Subscription Services or Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the Fees for services.

6.2 COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement. Further, Customer will comply with all applicable export and import control laws and regulations in its use of the Licensed Products and Subscription Services. In particular, Customer will not export or re-export the Licensed Products without Motorola's prior written consent, and, if such consent is granted, without Customer first obtaining all required United States and foreign government licenses. Customer further agrees to comply with all applicable laws and regulations in providing the Customer Data to Motorola, and Customer warrants and represents to Motorola that Customer has all rights necessary to provide such Customer Data to Motorola for the uses as contemplated hereunder. Customer shall obtain at its expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities as

may from time to time be required in connection with its activities related to this Agreement.

6.3 AUDIT. Motorola reserves the right to monitor and audit use of the Subscription Services. Customer will cooperate and will require Users to cooperate with such monitoring or audit.

6.4 ASSIGNABILITY. Neither Party may assign this Agreement without the prior written consent of the other Party (which will not be unreasonably withheld or delayed), except that Motorola may assign this Agreement to any of its affiliates.

6.5 SUBCONTRACTING. Motorola may not subcontract any portion of the Services without the prior written consent of Customer, which will not be unreasonably withheld or delayed.

6.6 WAIVER. Failure or delay by either Party to exercise a right or power will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

6.7 SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or otherwise unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

6.8 INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement as an independent contractor. The parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

6.9 HEADINGS AND SECTION REFERENCES. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

6.10 GOVERNING LAW. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State of Texas.

6.11 NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt

6.12 AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

6.13 RETURN OF EQUIPMENT. Upon termination of the contract for any reason, Customer shall return to Motorola all equipment delivered to Customer, if any.

7. **SURVIVAL OF TERMS.** The following provisions survives the expiration or termination of this Agreement for any reason: if any payment obligations exist, Section 3.8 (Subscription Fees); Section 4 (Confidential Information and Proprietary Rights); Section 3.14 (Limitation of Liability); Section 3.15 (Default and Termination); Section 3.16 (Disputes); and all General provisions in Section 6.

8. **ENTIRE AGREEMENT.** DIR Contract number DIR-TSO-4101, this Agreement, and any related attachments constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

In witness whereof, the parties hereto have executed this Agreement as of the Effective Date.

CUSTOMER

MOTOROLA SOLUTIONS, INC.

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

APPENDIX G
TO DIR CONTRACT NUMBER DIR-TSO-4101
SOFTWARE PRODUCTS ADDENDUM

This Software Products Addendum (this “**SPA**”) to DIR Contract number DIR-TSO-4101 (“**Primary Agreement**”) is entered into between Motorola Solutions, Inc. (“**Motorola**”) and _____ (“**DIR Customer**”). Capitalized terms used in this SPA, but not defined herein, will have the meanings set forth in the Primary Agreement or the applicable Addenda.

1. Addendum. This SPA governs DIR Customer’s purchase of certain Motorola software Products, including Software Systems, and will form part of the Parties’ Agreement. A “**Software System**” is a solution that includes at least one command center software Product and requires Integration Services to deploy such software Product at a DIR Customer Site or onto any DIR Customer-Provided Equipment or Equipment provided to DIR Customer. In addition to the Primary Agreement, other Addenda may be applicable to the Software System or other software Products, including the Subscription Services Agreement (“**SSA**”), Appendix F of the Primary Agreement, with respect to Subscription Services or Software, and the Communications System Agreement and its exhibits (“**CSA**”), Appendix D of the Primary Agreement, with respect to Licensed Software and Equipment, as further described below. This SPA will control with respect to conflicting terms any other applicable Addendum, but only as applicable to the Software System or other software Products purchased under this SPA and not with respect to other Products and Services. This SPA is subject to the Primary Agreement. In the event of a conflict between this SPA and the Primary Agreement, the Primary Agreement shall control.

2. Software Systems; Applicable Terms and Conditions.

2.1. On-Premise Software System. If DIR Customer purchases an “on-premises Software System,” where Equipment and Licensed Software are installed at DIR Customer Sites or on DIR Customer-Provided Equipment, then, unless the Ordering Document(s) specify that any software is being purchased on a subscription basis (i.e., as Subscription Software), such Equipment and Licensed Software installed at DIR Customer Sites or on DIR Customer-Provided Equipment are subject to the CSA. On-premises Software Systems described in this Section qualify for the System Warranty as described in **Section 5 – On-Premises Software System Warranty** (the “**System Warranty**”). In connection with the on-premises Software System, DIR Customer may also purchase additional Subscription Software that integrates with its on-premises Software System (e.g., CommandCentral Aware) (each, an “**Add-On Subscription**”). Any Add-On Subscription will be subject to the terms and conditions of the SSA and excluded from the System Warranty.

2.2. On-Premise Software System as a Service. If DIR Customer purchases an “on-premises Software System as a service,” where Equipment and software Products are installed at DIR Customer Sites or on DIR Customer-Provided Equipment, and such software is generally licensed on a subscription basis (i.e., as Subscription Software), then such Subscription Software will be subject to the SSA and not the CSA. Any (a) Equipment purchased, (b) firmware preinstalled on such Equipment, and (c) Microsoft operating system Licensed Software are subject to the CSA and its Software License Agreement exhibit. On-premises Software Systems as a service described in this Section are provided as a service and, accordingly, do not qualify for the System Warranty. System completion, however, is determined in accordance with the provisions of **Section 3 – Software System Completion** below.

2.3. Cloud Hosted Software System. If DIR Customer purchases a “cloud hosted Software System,” where the applicable software is hosted in a data center and provided to DIR Customer as a service (i.e., as hosted Subscription Software), including CommandCentral Products, then such Subscription Software is subject to the SSA. Any Equipment purchased in connection with a cloud Software System is subject to the CSA. Cloud hosted Software Systems described in this Section do not qualify for the System Warranty. System completion, however, is determined in accordance with the provisions of **Section 3 – Software System Completion** below.

2.4. Services. Any Integration Services or Maintenance and Support Services purchased in connection with, or included as a part of, a Software System are subject to the Primary Agreement, and as described in the applicable Ordering Document.

3. Software System Completion. Any Software System described in an Ordering Document hereunder (including the Products, Integration Services, and all other components thereof) will be deemed completed upon DIR Customer’s (or the applicable Authorized User’s) Beneficial Use of each Product that is included in the Software System (unless alternative acceptance procedures are set forth in the applicable Ordering Document) (the “**System Completion Date**”). DIR Customer will not unreasonably delay Beneficial Use of any Product within a Software System, and in any event, the Parties agree that Beneficial Use of a Product will be deemed to have occurred thirty (30) days after functional demonstration. For clarity, if a Software System is comprised of more than one Product, Motorola may notify DIR Customer that all Integration Services for a particular Product within the Software System have been completed, and DIR Customer may have Beneficial Use of such Product prior to having Beneficial Use of other Products in the Software System, or of the Software System as a whole. In such case, the Integration Services applicable to such Product will be deemed complete upon DIR Customer’s Beneficial Use of the Product (“**Product Completion Date**”), which may occur before the System Completion Date. As used in this Section, “**Beneficial Use**” means use by DIR Customer or at least one (1) Authorized User of the material features and functionalities of a Product within a Software System, in material conformance with Product descriptions in the applicable Ordering Document. This Section applies to Products purchased as part of a Software System notwithstanding the delivery provisions of the Appendix applicable to such Products, such as the SSA or CSA, and this Section will control over such other delivery provisions to the extent of a conflict.

4. Payment. DIR Customer will pay invoices for the Products and Services covered by this SPA in accordance with the invoice payment terms set forth in the Primary Agreement. Fees for Software Systems will be invoiced as of the System Completion Date, unless another payment process or schedule or milestones are set forth in an Ordering Document or applicable Addendum. In addition to Equipment, Licensed Software, Subscription Software and Integration Services (as applicable) sold as part of a Software System, the Ordering Documents for a Software System may also include post-deployment Integration Services or other Services which are to be provided following the date of functional demonstration (“**Post-Deployment Services**”). Post-Deployment Services will be invoiced upon their completion and paid by DIR Customer in accordance with the terms of the Primary Agreement.

5. On-Premises Software System Warranty. Subject to the disclaimers in the Primary Agreement and any other applicable Appendix or Addenda, Motorola represents and warrants that, on the System Completion Date for an on-premises Software System described in **Section 2.1 – On-Premises Software System**, or on the applicable Product Completion Date for a specific Product within such on-premises Software System, if earlier, (a) such Software System or Product will perform in accordance with the descriptions in the applicable Ordering Documents in all material respects, and (b) if DIR Customer has purchased any Equipment or Motorola

Licensed Software (but, for clarity, excluding Subscription Software) as part of such on-premises Software System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon the System Completion Date for the Software System that includes such Products, or on the applicable Product Completion Date, if earlier, instead of commencing upon delivery of the Products in accordance with the terms and conditions set forth in CSA. The warranties set forth in the applicable Addenda are not otherwise modified by this SPA.

6. Prohibited Use. DIR Customer will not integrate or use, or permit a third party or an Authorized User to integrate or use, any Non-Motorola Content with or in connection with a Software System or other software Product provided by Motorola under this SPA, without the express written permission of Motorola.

7. API Support. Motorola will use commercially reasonable efforts to maintain its Application Programming Interface (“API”) offered sold in connection with any Software System. APIs will evolve and mature over time, requiring changes and updates. Motorola will use reasonable efforts to continue supporting any version of an API for 6 months after such version is introduced, but if Motorola determines, in its sole discretion, determines to discontinue support of an API for any reason, Motorola will provide reasonable advance notification to DIR Customer. If an API presents a security risk, Motorola may discontinue an API without prior notice.

8. Support of Downloaded Clients. If DIR Customer purchases any software Product that requires a client installed locally on any DIR Customer-Provided Equipment or Equipment in possession of DIR Customer, DIR Customer will be responsible for downloading and installing the current version of such client, as it may be updated from time to time. Motorola will use reasonable efforts to continue supporting any version of a client for forty-five (45) days following its release, but Motorola may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates, and Motorola makes no representations or warranties that any software Product will support prior versions of a client.

9. Applicable End User Terms. Reserved.

10. Additional Terms for On-Premise Software System as a Service. The terms set forth in this **Section 10 – Additional Terms for On-Premise Software System as a Service** apply in the event DIR Customer purchases an on-premises Software System as a service under this SPA.

10.1. Transition to Subscription License Model. If the Parties mutually agree that any on-premises Subscription Software purchased under this SPA as part of an on-premises Software System as a service will be replaced with or upgraded to Subscription Software hosted in a data center, then upon such time which the Parties execute the applicable Ordering Document, (a) the licenses granted to such on-premises Subscription Software under the applicable Ordering Document will automatically terminate, (b) DIR Customer and its Authorized Users will cease use of the applicable on-premises copies of Subscription Software, and (c) the replacement hosted Subscription Software provided hereunder will be governed by the terms of the SSA and this SPA.

10.2. Transition Fee. Motorola will not charge additional Fees for Services related to the transition to hosted Subscription Software, as described in **Section 10.1 – Transition to Subscription License Model**. Notwithstanding the foregoing, subscription Fees for the applicable hosted Subscription Software are subject to the SSA and the applicable Ordering Document, and may be greater than Fees paid by DIR Customer for on-premises Subscription Software.

10.3. Software Decommissioning. Upon (a) transition of the on-premises Software System as a service to Subscription Software hosted in a data center or (b) any termination of the Subscription Software license for the on-premises Software System as a service, Motorola will have the right to enter DIR Customer Sites and decommission the applicable on-premises Subscription Software that is installed at DIR Customer's Site or on DIR Customer-Provided Equipment. For clarity, DIR Customer will retain the right to use Licensed Software that is firmware incorporated into Equipment purchased by DIR Customer from Motorola and any Microsoft operating system Licensed Software.

11. Additional Terms for CAD and Records Products. The terms set forth in this **Section 11 – Additional Terms for CAD and Records Products** apply in the event DIR Customer purchases any Computer Aided Dispatch (“CAD”) or Records Products under this SPA.

11.1. Support Required. DIR Customer acknowledges and agrees that the licenses granted by Motorola under the Agreement to CAD and Records Products for on-premises Software Systems are conditioned upon DIR Customer purchasing Maintenance and Support Services for such Products during the term of the applicable license. If at any time during the term of any such license, DIR Customer fails to purchase associated Maintenance and Support Services (or pay the fees for such Services), Motorola will have the right to terminate or suspend the software licenses for CAD and Record Products, and this SPA or the applicable Ordering Document.

11.2. CJIS Security Policy. Motorola agrees to support DIR Customer's obligation to comply with the Federal Bureau of Investigation Criminal Justice Information Services (“**CJIS**”) Security Policy and will comply with the terms of the CJIS Security Addendum for the term of the Addendum or Ordering Document for the applicable Product. DIR Customer hereby consents to Motorola screened personnel serving as the “escort” within the meaning of CJIS Security Policy for unscreened Motorola personnel that require access to unencrypted Criminal Justice Information for purposes of Product support and development.

12. Additional Cloud Terms. The terms set forth in this **Section 12 – Additional Cloud Terms** apply in the event DIR Customer purchases any cloud hosted software.

12.1. Data Storage. Reserved.

12.2. Data Retrieval. Cloud hosted software will leverage different types of storage to optimize software, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will determine the data retrieval speed. Access to content in archival storage may take up to 24 hours to be viewable.

12.3. Maintenance. Scheduled maintenance of cloud hosted Software will be performed periodically. Motorola will make commercially reasonable efforts to notify customers one (1) week in advance of any such maintenance. Unscheduled and emergency maintenance may be required from time to time. Motorola will make commercially reasonable efforts to notify customers of any unscheduled or emergency maintenance 24 hours in advance.

13. Survival. The following provisions will survive the expiration or termination of this SPA for any reason: **Section 1 – Addendum; Section 2 – Software Systems; Applicable Terms and Conditions; Section 6 – Prohibited Use; Section 9 – Applicable End User Terms; Section 13 – Survival.**

APPENDIX H
TO DIR CONTRACT NUMBER DIR-TSO-4101
MOBILE VIDEO ADDENDUM

This Mobile Video Addendum (this “**MVA**”) to DIR Contract number DIR-TSO-4101 (“**Primary Agreement**”) is entered into between Motorola Solutions, Inc. (“**Motorola**”) and _____ (“**DIR Customer**”). Capitalized terms used in this MVA, but not defined herein, will have the meanings set forth in the Primary Agreement or the applicable Addenda.

1. Addendum. This MVA governs DIR Customer’s purchase of any Motorola mobile video Products, including participation in Motorola’s Video-as-a-Service Program (“**VaaS Program**”). A “**Mobile Video System**” is a solution that includes at least one mobile video Product and requires Integration Services to deploy such mobile video Product or the associated evidence management Product at a DIR Customer Site. In addition to the Primary Agreement, other Addenda may be applicable to Products offered under this MVA, including the Subscription Services Agreement (“**SSA**”), Appendix F of the Primary Agreement, with respect to Subscription Services or Software, and the Communications System Agreement and its exhibits (“**CSA**”), Appendix D of the Primary Agreement, with respect to licensed software and equipment, as each of those terms are defined therein, and as further described below. This MVA will control with respect to conflicting or ambiguous terms in any other applicable Addendum, but only as applicable to the Mobile Video System or other Products purchased under this MVA and not with respect to other Products or Services. This MVA is subject to the Primary Agreement. In the event of a conflict between this MVA and the Primary Agreement, the Primary Agreement shall control.

2. Evidence Management Systems; Applicable Terms and Conditions.

2.1. On-Premise Evidence Management. If DIR Customer purchases a Mobile Video System where Equipment and Licensed Software for evidence management is installed at DIR Customer Sites (an “**On-Premises Evidence Management System**”), then, unless the Ordering Document(s) specify that any software is being purchased on a subscription basis (i.e., as Subscription Software), any (i) Equipment and (ii) Licensed Software installed at DIR Customer Sites or on DIR Customer-Provided Equipment, in each case purchased in connection with the On-Premises Evidence Management System, are subject to the CSA and its Software License Agreement exhibit. On-Premises Evidence Management Systems described in this Section qualify for the System Warranty as described in **Section 4 – On-Premises Evidence Management System Warranty** (the “**System Warranty**”).

2.2. Cloud Hosted Evidence Management. If DIR Customer purchases Mobile Video System where the software for evidence management is hosted in a data center and provided to DIR Customer as a service (“**Cloud Hosted Evidence Management System**”), including CommandCentral Evidence and EvidenceLibrary.com Products, then such Cloud Hosted Evidence Management System is subject to the SSA. Any Equipment purchased in connection with Cloud Hosted Evidence Management System is subject to the CSA and its Software License Agreement exhibit. Cloud Hosted Evidence Management System described in this Section do not qualify for the System Warranty. System completion, however, is determined in accordance with the provisions of **Section 7 –System Completion** below.

2.3. Services. Any Integration Services or Maintenance and Support Services purchased in connection with, or included as a part of, a Mobile Video System are subject to the Primary Agreement, and as described in the applicable Ordering Document.

3. Payment. DIR Customer will pay invoices for the Products and Services covered by this MVA in accordance with the invoice payment terms set forth in the Primary Agreement. Fees for Mobile Video Systems will be invoiced as of the System Completion Date, unless another payment process or schedule or milestones are set forth in an Ordering Document or applicable Addendum. In addition to Equipment, Licensed Software, Subscription Software and Integration Services (as applicable) sold as part of a Mobile Video System, the Ordering Documents for a Mobile Video System may also include post-deployment Integration Services or other Services which are to be provided following the date of functional demonstration ("**Post-Deployment Services**"). Post-Deployment Services will be invoiced upon their completion and paid by DIR Customer in accordance with the terms of the Primary Agreement.

4. On-Premises Evidence Management System Warranty. Subject to the disclaimers in the Primary Agreement and any other applicable Addenda, Motorola represents and warrants that, on the System Completion Date (as defined below) for an On-Premises Evidence Management System described in **Section 2.1 – On-Premises Evidence Management** (a) such On-Premises Evidence Management System will perform in accordance with the descriptions in the applicable Ordering Documents in all material respects, and (b) if DIR Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such On-Premises Evidence Management System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon the System Completion Date for the On-Premises Evidence Management System that includes such Products, or on the applicable Product Completion Date, if earlier, instead of commencing upon delivery of the Products in accordance with the terms and conditions set forth in the CSA. The warranties set forth in the applicable Addenda are not modified by this MVA.

5. Additional Software and Video Terms.

5.1. Unlimited Storage. In the event DIR Customer purchases a Cloud Hosted Evidence Management System with "Unlimited Storage", including evidence management under the VaaS Program, then "Unlimited Storage" means storage of all data captured using Equipment sold under this MVA, provided that (1) video recordings are recorded in an event-based setting where users are not recording an entire shift under one video footage and (2) DIR Customer's data retention policies and practices do not result in the retention of data beyond the statutory minimums set forth by the State in which the DIR Customer resides. In the event DIR Customer does not comply with the preceding clauses (1) and (2), Motorola shall have the right to charge DIR Customer for such excess data storage at the prevailing rates. Motorola also has the right to place any data that has not been accessed for a consecutive six (6) month period into archival storage, retrieval of which may take up to twenty-four (24) hours from any access request.

5.2. Applicable End User Terms. Reserved.

5.3. WatchGuard Detector Mobile. Any order by DIR Customer of WatchGuard Detector Mobile is on a subscription basis and subject to the SSA.

5.4. Vigilant Access. DIR Customer may opt for subscription to additional Subscription Software, including use of the Law Enforcement Archival Network ("**LEARN**"), which is subject to the SSA and any additional terms governing the use of LEARN. If DIR Customer purchases a subscription to commercial license plate recognition data, then DIR Customer will be required execute and agree to the terms of Motorola's standard Data License Addendum prior to the purchase.

5.5. License Plate Recognition Data. License plate recognition (“**LPR**”) data collected by DIR Customer is considered DIR Customer Data (as defined in the below) and is therefore subject to the DIR Customer’s own retention policy. DIR Customer, at its option, may share its LPR data with other similarly situated Law Enforcement Agencies (“**LEAs**”) which contract with Motorola to access LEARN by selecting this option within LEARN. Other similarly situated LEAs may similarly opt to share their LPR data with DIR Customer using LEARN. Such LPR data generated by other LEAs is considered Third-Party Data (as defined in the below), is governed by the retention policy of the respective LEA, and shall be used by DIR Customer only in connection with its use of LEARN. LPR data that has reached its expiration date will be deleted from LEARN. Only individuals who are agents and/or sworn officers of DIR Customer and who are authorized by DIR Customer to access LEARN on behalf of DIR Customer through login credentials provided by DIR Customer (“**User Eligibility Requirements**”) may access LEARN. Vigilant in its sole discretion may deny access to LEARN to any individual based on such person’s failure to meet the User Eligibility Requirements. DIR Customer will ensure no user logins are provided to agents or officers of other local, state, or Federal LEAs without the express written consent of Vigilant. DIR Customer will be responsible for all individuals’ access to, and use of, LEARN through use of DIR Customer login credentials, including ensuring their compliance with this Agreement.

5.6. Data Definitions. The following terms will have the stated meanings: “**DIR Customer Contact Data**” means data Motorola collects from DIR Customer, its Authorized Users, and their end users for business contact purposes, including marketing, advertising, licensing and sales purposes; “**Service Use Data**” means data generated by DIR Customer’s use of the Products and Services or by Motorola’s support of the Products and Services, including personal information, product performance and error information, activity logs and date and time of use; “**DIR Customer Data**” means data, information, and content, including images, text, videos, documents, audio, telemetry, location and structured data base records, provided by, through, or on behalf of DIR Customer, its Authorized Users, and their end users through the use of the Products and Services. DIR Customer Data does not include DIR Customer Contact Data, Service Use Data, or information from publicly available sources or other Third-Party Data or Motorola Data; “**Third-Party Data**” means information obtained by Motorola from publicly available sources or its third party content providers and made available to DIR Customer through the Products or Services; “**Motorola Data**” means data owned or licensed by Motorola; “**Feedback**” means comments or information, in oral or written form, given to Motorola by DIR Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services; and “**Process**” or “**Processing**” means any operation or set of operations which is performed on personal information or on sets of personal information, whether or not by automated means, such as collection, recording, copying, analyzing, caching, organization, structuring, storage, adaptation, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

5.7. API Support. Motorola will use commercially reasonable efforts to maintain its Application Programming Interface (“**API**”) sold in connection with any Mobile Video System. APIs will evolve and mature over time, requiring changes and updates. Motorola will use reasonable efforts to continue supporting any version of an API for six (6) months after such version is introduced, but if Motorola determines, in its sole discretion, to discontinue support of an API for any reason, Motorola will provide reasonable advance notification to DIR Customer. If an API presents a security risk, Motorola may discontinue an API without prior notice.

5.8. Support of Downloaded Clients. If DIR Customer purchases any software Product that requires a client installed locally on DIR Customer-Provided Equipment or Equipment in

possession of DIR Customer, DIR Customer will be responsible for downloading and installing the current version of such client, as it may be updated from time to time. Motorola will use reasonable efforts to continue supporting any version of a client for forty-five (45) days following its release, but Motorola may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates, and Motorola makes no representations or warranties that any software Product will support prior versions of a client.

5.9. CJIS Security Policy. Motorola agrees to support DIR Customer's obligation to comply with the Federal Bureau of Investigation Criminal Justice Information Services ("**CJIS**") Security Policy and will comply with the terms of the CJIS Security Addendum for the term of the Addendum or Ordering Document for the applicable Product. DIR Customer hereby consents to Motorola screened personnel serving as the "escort" within the meaning of CJIS Security Policy for unscreened Motorola personnel that require access to unencrypted Criminal Justice Information for purposes of Product support and development.

6. VaaS Program Terms. All hardware provided by Motorola to DIR Customer under the VaaS Program will be considered "Equipment", as defined in the CSA, and constitutes a purchase of such Equipment subject to the terms of the Primary Agreement and CSA. Additionally, the following terms and conditions apply to any Equipment purchased under the VaaS Program:

6.1. Technology Refresh. All body cameras and associated batteries purchased under the VaaS Program ("**Body Cameras**") are eligible for a one-time replacement at no additional cost to the DIR Customer beginning on the date three (3) years following the date of delivery of the initial Body Cameras and associated batteries provided under the VaaS Program. In order to receive any replacement Body Camera applicable under this **Section 6.1 – Technology Refresh**, DIR Customer must return the existing Body Camera to Motorola in working condition. The corresponding replacement Body Camera will be the then-current model of the Body Camera at the same tier as the Body Camera that is returned to Motorola. For clarity, any other Equipment received by DIR Customer as part of the VaaS Program, other than Body Cameras, will not be eligible for a technology refresh hereunder.

6.2. No-Fault Warranty. Subject to the disclaimers set forth in the Primary Agreement and CSA, upon delivery of any Equipment purchased as part of the VaaS Program, Motorola will provide a No-fault Warranty to DIR Customer for such Equipment that extends until the end of the term applicable to such Equipment; except that the No-fault Warranty will not apply to: (i) any Equipment with intentionally altered or removed serial numbers, (ii) any other damages disclaimed under the Primary Agreement or CSA, or (iii) any Equipment that Motorola determines was changed, modified, or repaired by DIR Customer or any third party. The "**No-fault Warranty**" means that Motorola will repair or replace any Equipment components or parts that render the applicable Equipment unable to perform its intended purpose. With respect to any batteries in Body Cameras, a battery will be considered faulty and covered under this No-fault Warranty if it falls below sixty percent (60%) of rated capacity.

6.3. Commitment Term. Reserved.

6.4. Additional Devices. Any additional Equipment, including any accessory items, ordered by DIR Customer after DIR Customers' initial purchase of Equipment hereunder may be subject to an incremental increase in Fees. In the event DIR Customer orders additional Equipment under the VaaS Program within the ninety (90) days immediately following its initial purchase, such Equipment will be included in and subject to the Initial Commitment Term..

6.5. Included Subscription Software.

- 6.5.1. EvidenceLibrary.com. Subject to **Section 6.7.1 – VaaS Term**, the VaaS Program provides DIR Customer with a subscription to the Cloud Hosted Evidence Management System specified in the Ordering Document during the VaaS Term (as defined below), the use of which is subject to the SSA. DIR Customer's subscription will include unlimited users, Unlimited Storage and unlimited sharing, provided any media or data uploaded to the Cloud Hosted Evidence Management System is done so using Motorola Equipment actively enrolled in the VaaS Program. Following expiration of the applicable term, if DIR Customer desires to continue use of expired Equipment with the Cloud Hosted Evidence Management System, DIR Customer must purchase additional access to Cloud Hosted Evidence Management System based on Motorola's prevailing rates, or Motorola may disconnect connectivity of any expired Equipment to the Cloud Hosted Evidence Management System.
- 6.5.2. CommandCentral. For each Body Camera, in-car system or integrated system purchased, DIR Customer will receive one user license for Motorola CommandCentral, which provides access to CC Community, CC Capture, CC Vault and CC Records. If the DIR Customer requires additional licenses to CommandCentral they must be purchased for an additional fee.
- 6.5.3. CarDetector Mobile. If DIR Customer's VaaS Program order includes an in-car system, DIR Customer will receive a subscription to WatchGuard CarDetector Mobile during the VaaS Term, the use of which is subject to the SSA.

6.6. VaaS Program Payment. Unless otherwise provided in an Ordering Document, DIR Customer will prepay a subscription Fee quarterly (each a "**Subscription Quarter**"), as set forth in an Ordering Document. If DIR Customer orders any additional Product(s) under the VaaS Program subsequent to the initial purchase by DIR Customer, Fees for such additional Product will be added to the quarterly subscription Fee, and will be payable on the same Fee payment schedule as the initial Product purchased under the VaaS Program; provided, however, that for the first Subscription Quarter during which such additional Product is purchased, the subscription Fee for the applicable additional Product will be pro-rated based on the applicable number of days remaining in the such initial Subscription Quarter.

6.7. VaaS Program Term and Termination.

- 6.7.1. VaaS Term. DIR Customer's participation in the VaaS Program will commence upon the System Completion Date under this MVA, and will continue through the end of the final term hereunder ("the "**VaaS Term**"). Following the end of any term, DIR Customer's access to the Cloud Hosted Evidence Management System with respect to the Equipment purchased relative to that term will expire, and DIR Customer must download or transfer all DIR Customer Data associated with the applicable Equipment within thirty (30) days following expiration unless DIR Customer purchases extended access to the Cloud Hosted Evidence Management System from Motorola at the prevailing rates. Motorola has no obligation to retain DIR Customer Data for expired Equipment beyond thirty (30) days following expiration of the applicable term. For example, if DIR Customer purchases 100 devices on January 1 of Year 1 of the VaaS Term, and then 100 additional devices on January 1 of Year 3, on December 31 of Year 5 (i.e., the conclusion of the initial term), DIR Customer's access to the Cloud Hosted Evidence Management System with respect to the first 100 devices will be discontinued, and

DIR Customer must purchase extended storage or transfer all DIR Customer Data associated with the first 100 devices within thirty (30) days of expiration of the initial term. In the foregoing example, the Cloud Hosted Evidence Management System access and data storage for the second 100 devices purchase will extend until December 31 of Year 7.

- 6.7.2. Termination. The termination provisions applicable to the VaaS Program will be those set forth in the Primary Agreement, EPSLA and SSA, as applicable. Based on upfront discounts provided in the VaaS program, If DIR Customer's participation in the VaaS Program is terminated for any reason prior to the end of the Initial Commitment Term or any Subsequent Commitment Term, DIR Customer will pay the pro-rated remainder of the aggregate Equipment MSRP price (prevailing as of the time of delivery), calculated by multiplying the MSRP price of all Equipment purchased under the VaaS Program by the percentage resulting from dividing the number of months remaining in the Commitment Term applicable to such Equipment by sixty (60). In the event DIR Customer purchased Equipment on multiple dates, resulting in separate Commitment Terms for certain Equipment, the preceding calculation will be made relative to the applicable Commitment Term for each Equipment order. For example, if DIR Customer purchased \$1,000 worth of Equipment on January 1 of Year 1 of the VaaS Term, and then \$1,000 worth of Equipment on January 1 of Year 2, and then DIR Customer's VaaS Program terminates on December 31 of Year 3, DIR Customer will be required to repay: $\$1,000 \times (24/60) + \$1,000 \times (36/60)$, which is equal to \$1,000 in the aggregate.

7. **System Completion.** Any Mobile Video System sold hereunder will be deemed completed upon DIR Customer's (or the applicable Authorized User's) Beneficial Use of the applicable Mobile Video System (the "**System Completion Date**"). DIR Customer will not unreasonably delay Beneficial Use, and in any event, the Parties agree that Beneficial Use will be deemed to have occurred thirty (30) days after functional demonstration. As used in this Section, "**Beneficial Use**" means use by DIR Customer or at least one (1) Authorized User of the material features and functionalities of Mobile Video System, in material conformance with Product descriptions in the applicable Ordering Document. Any additional Equipment sold in connection with the initial Mobile Video System shall be deemed delivered in accordance of the terms of the CSA. Any additional Subscription Software purchased under the VaaS Program will be deemed delivered upon DIR Customer's receipt of credentials required for access to the Cloud Hosted Evidence Management System or upon Motorola otherwise providing access to the Cloud Hosted Evidence Management System. This Section applies to Products purchased under the MVA notwithstanding the delivery provisions of the Addendum applicable to such Products, such as the SSA or CSA, and this Section will control over such other delivery provisions to the extent of a conflict.

8. **Additional Cloud Terms.** The terms set forth in this **Section 8 – Additional Cloud Terms** apply in the event DIR Customer purchases any cloud hosted software Products under this MVA, including a Cloud Hosted Evidence Management System.

8.1. Data Storage. Reserved.

8.2. Data Retrieval. Cloud hosted software Products will leverage different types of storage to optimize software, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will

determine the data retrieval speed. Access to content in archival storage may take up to twenty-four (24) hours to be viewable.

8.3. Availability. Motorola will make reasonable efforts to provide monthly availability of 99.9% for cloud hosted software Products with the exception of maintenance windows. There are many factors beyond Motorola's control that may impact Motorola's ability to achieve this goal.

8.4. Maintenance. Scheduled maintenance of cloud hosted software Products will be performed periodically. Motorola will make commercially reasonable efforts to notify DIR Customers one (1) week in advance of any such maintenance. Unscheduled and emergency maintenance may be required from time to time. Motorola will make commercially reasonable efforts to notify DIR Customers of any unscheduled or emergency maintenance twenty-four (24) hours in advance.

9. Survival. The following provisions will survive the expiration or termination of this MVA for any reason: **Section 1 – Addendum; 2 – Evidence Management Systems; Applicable Terms and Conditions; Section 3 – Payment; Section 5.2 – Applicable End User Terms; Section 6.5.1 – EvidenceLibrary.com; Section 6.7 – VaaS Program Term and Termination; Section 9 – Survival.**

APPENDIX I
TO DIR CONTRACT NUMBER DIR-TSO-4101
ADDENDUM FOR CYBER SECURITY SERVICES

This Addendum for Cyber Security Services Addendum ("**Cyber Addendum**") to DIR Contract number DIR-TSO-4101 ("**Primary Agreement**") is entered into between Motorola Solutions, Inc. ("**Motorola**") and _____ ("**DIR Customer**") relating to the DIR Customer's purchase of cyber security services under the terms of the Primary Agreement,.

Section 1 SCOPE OF ADDENDUM

1.1 This Addendum governs DIR Customer's purchase of cyber security services, including professional services and managed security or subscription services and any related software, products, items or devices to be provided by Motorola to DIR Customer ("Cyber Security Services" or "Services"), the nature and scope of which are more fully described in a Statement of Work. This Addendum sets out the additional terms and conditions as it relates to the DIR Customer's purchase of such Services.

1.2 "Statement(s) of Work" or SOWs" as used in the Addendum means a statement of work, ordering document, accepted proposal, or other agreed upon engagement document issued under the Primary Agreement or otherwise pursuant to this Addendum. The initial statement of work will be attached hereto as Exhibit A-1, and any additional, mutually agreed upon statements of work, each of which will be governed by the terms and conditions of this Addendum shall be attached hereto as Exhibits A-2, A-3 etc. Statements of Work may set out certain "Deliverables," which include all written information (such as reports, specifications, designs, plans, drawings, or other technical or business information) that Motorola prepares for DIR Customer in the performance of the Services and is obligated to provide to DIR Customer under a SOW and this Addendum. The Deliverables, if any, are more fully described in the Statements of Work.

Section 2 CYBER SECURITY SERVICES

2.1 Cyber Security Services often require active customer engagement. This Addendum and the SOW(s) set out items or actions to be accomplished by DIR Customer. DIR Customer will also assist or provide or perform items or actions as reasonably requested by Motorola in the course of performance and necessary to ensure timely and efficient performance of the Services. DIR Customer will ensure that information DIR Customer provides to Motorola in connection with receipt of Services is accurate and complete in all material respects.

2.2 DIR Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to provide the products and Services and perform its other duties under any SOW and this Addendum. Unless the applicable SOW states otherwise, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions or DIR Customer information, decisions, or approvals. Services and Deliverables are limited by, among other things: nature of the security threats, the accuracy and completeness of information provided to Motorola; the level of effort utilized; and subjective judgments relating to relative risk and mitigation priorities which are inherent in any such services and may or may not be correct.

2.3 DIR Customer shall take any actions necessary to mitigate risk to its operations and protect and preserve its computer systems, data environment, networks and DIR Customer Data, including creation of operational workarounds, backups and redundancies. DIR Customer shall inform Motorola in advance to the extent adequate backups and redundancies are not possible for certain elements of its systems or data. DIR Customer acknowledges and agrees that Services may impact, disrupt or damage information systems, data environments, data or DIR Customer Data. Motorola disclaims

responsibility for costs in connection with any such disruptions of and/or damage to DIR Customer's or a third party's information systems, equipment, voice transmissions, data and DIR Customer Data, including, but not limited to, denial of access to a legitimate system user, automatic shut-down of information systems caused by intrusion detection software or hardware, or failure of the information system resulting from the provision or delivery of the Service.

2.4 Inherent Limitations on Scope of Services. Because of the evolving, often malicious and often highly sophisticated nature of cyber security threats, as well as the evolving complexity and customization inherent in many customer computer system environments, among other things, the protections offered by Cyber Security Services are necessarily limited. Motorola does not represent that it will identify, fully recognize, discover or resolve all security events or threats, system vulnerabilities, malicious codes, files or malware, indicators of compromise or internal threats or concerns. Motorola does not guarantee that any recommendations it makes will be successful.

2.5 Reserved.

2.6 DIR Customer-Provided Equipment. Certain components, including equipment and software, not provided by Motorola may be required for use of the Services ("DIR Customer-Provided Equipment"). DIR Customer will be responsible, at its sole cost and expense, for providing and maintaining the DIR Customer-Provided Equipment in good working order. DIR Customer represents and warrants that it has all rights in DIR Customer-Provided Equipment to permit Motorola to access and use the applicable DIR Customer-Provided Equipment to provide the Services under this Cyber Addendum, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). DIR Customer (and not Motorola) will be fully liable for DIR Customer-Provided Equipment, and DIR Customer will immediately notify Motorola of any DIR Customer-Provided Equipment damage, loss, change, or theft that may impact Motorola's ability to provide the Services under this Cyber Addendum, and DIR Customer acknowledges that any such events may cause a change in the price, fees or performance schedule.

2.7 Non-Motorola Content. In certain instances, DIR Customer may be permitted to access, use, or integrate DIR Customer or third-party software, services, content, and data that is not provided by Motorola (collectively, "Non-Motorola Content") with or through the Services. If DIR Customer accesses, uses, or integrates any Non-Motorola Content with the Services, DIR Customer will first obtain all necessary rights and licenses to permit DIR Customer's and its Authorized Users' use of the Non-Motorola Content in connection with the Services. DIR Customer will also obtain the necessary rights for Motorola to use such Non-Motorola Content in connection with providing the Services, including the right for Motorola to access, store, and process such Non-Motorola Content (e.g., in connection with subscription services), and to otherwise enable interoperation with the Services. DIR Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-Motorola Content with the Services, and that DIR Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-Motorola Content. If any Non-Motorola Content require access to DIR Customer Data (as defined below), DIR Customer hereby authorizes Motorola to allow the provider of such Non-Motorola Content to access DIR Customer Data, in connection with the interoperation of such Non-Motorola Content with the Services. DIR Customer acknowledges and agrees that Motorola is not responsible for, and makes no representations or warranties with respect to, the Non-Motorola Content (including any disclosure, modification, or deletion of DIR Customer Data resulting from use of Non-Motorola Content or failure to properly interoperate with the Services). If DIR Customer receives notice that any Non-Motorola Content must be removed, modified, or disabled within the Services, DIR Customer will promptly do so. Motorola will have the right to disable or remove Non-Motorola Content if Motorola believes a violation of law, third-party rights, or Motorola's policies is likely to occur, or if such Non-Motorola Content poses or may pose a security or other risk or adverse impact to the products or Services, Motorola, Motorola's systems, or any third party (including other Motorola customers). Nothing in this Section will limit the exclusions set forth in Section 7.2 – Intellectual Property Infringement.

2.8 Beta Services. If Motorola makes any beta version of its Services ("Beta Service") available to DIR Customer, DIR Customer may choose to use such Beta Service at its own discretion, provided, however, that DIR Customer will use the Beta Service solely for purposes of DIR Customer's evaluation of such Beta Service, and for no other purpose. DIR Customer acknowledges and agrees that all Beta Services are offered "as-is" and without any representations or warranties or other commitments or protections from Motorola. Motorola will determine the duration of the evaluation period for any Beta Service, in its sole discretion, and Motorola may discontinue any Beta Service at any time. DIR Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

2.9 Subscription Services License. Subject to DIR Customer's and its Authorized Users' compliance with the Agreement, including payment terms, Motorola grants DIR Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use of any subscription or recurring Services identified in a SOW, and the associated Documentation, if any, solely for DIR Customer's internal business purposes. The foregoing license grant will be limited to use in the territory and to the number of licenses set forth in a SOW (if applicable), and will continue for the applicable Subscription Term. No custom development work will be performed under this Cyber Addendum. If applicable, Motorola will have the right to conduct an audit of total user licenses credentialed by DIR Customer for any Services during the applicable term, and DIR Customer will cooperate with such audit. If Motorola determines that DIR Customer's usage of Services exceeded the total number of any applicable licenses purchased by DIR Customer, Motorola may invoice DIR Customer for the additional licenses used by DIR Customer, pro-rated for each additional license from the date such license was activated, and DIR Customer will pay such invoice in accordance with the payment terms in this Cyber Addendum or SOW. Notwithstanding any provision to the contrary, to the extent certain Services are governed by a separate license, EULA, or other agreement, including terms governing third-party software, such as open source software, DIR Customer will comply, and ensure its Authorized Users comply, with such additional license agreements.

2.10 DIR Customer Restrictions. DIR Customers and Authorized Users will comply with the applicable Documentation, if any, and the copyright laws of the United States and all other relevant jurisdictions (including the copyright laws where DIR Customer uses the Services) in connection with their use of Services. DIR Customer will not, and will not allow others including the Authorized Users, to make the Services available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; reverse engineer, disassemble, or reprogram software used to provide any subscription Services or any portion thereof to a human-readable form; modify, create derivative works of, or merge the Services or software used to provide the Services with other software; copy, reproduce, distribute, lend, or lease the Services or Documentation for or to any third party; take any action that would cause the subscription Services, software used to provide the Services, or Documentation to be placed in the public domain; use the Services to compete with Motorola; remove, alter, or obscure, any copyright or other notice; share user credentials to subscription Services (including among Authorized Users); use the Services to store or transmit malicious code; or attempt to gain unauthorized access to the subscription Services or its related systems or networks.

Section 3 SOW PRICE OR FEE SCHEDULE

3.1 Each Statement of Work shall set out an agreed upon price and/or fee schedule applicable to that SOW in U.S. dollars. The parties acknowledge that pricing is dependent on the full term or subscription periods specified in any such SOW. Unless otherwise provided in a SOW, DIR Customer will prepay an annual subscription fee set forth in a SOW for each subscription Service and associated recurring Service, before the commencement of each Subscription Term. For any Partial Subscription Year, the applicable annual subscription fee will be prorated based on the number of months in the Partial Subscription Year. The annual subscription fee for subscription Services and associated recurring Services may include certain one-time fees, such as start-up fees, license fees, or other fees set forth in a SOW. Motorola will have the right to suspend the Services if DIR Customer fails to make any payments when due.

3.2 Invoicing. Motorola will invoice DIR Customer at the frequency set forth in the applicable SOW, and DIR Customer will pay all invoices in accordance with the Primary Agreement. .

3.3 Reserved.

Section 4 TIME SCHEDULE; FORCE MAJEURE;

4.1 All Services will be performed in accordance with the performance schedule included in the Statement of Work, or if there is no performance schedule, within a reasonable time period. Delivery of subscription Services will occur upon DIR Customer's receipt of credentials required for access to the subscription Services or upon Motorola otherwise providing access to the subscription Services platform. Non-recurring or non-subscription Services described in a SOW will be deemed complete upon Motorola's performance of all Services listed in such SOW ("**Service Completion Date**").

4.2 Term. The term of this Cyber Addendum will commence upon the Date set forth on the signature page below and will continue until the expiration or termination of all SOWs under this Cyber Addendum. Unless otherwise set out in a SOW or another addendum, DIR Customer's subscription Services under this Cyber Addendum, if any, will commence upon delivery of such subscription Services (and/or recurring Services, if applicable) and will continue for a twelve (12) month period or such longer period identified in a SOW (the "**Initial Subscription Period**").

4.3 Reserved.

Section 5 CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS

5.1. CONFIDENTIAL INFORMATION. This Section 5 is subject to the Texas Public Information Act.

5.1.1. "Confidential Information" means any and all non-public information provided by one Party ("Discloser") to the other ("Recipient") that is disclosed under this Cyber Addendum in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable businessperson would consider non-public and confidential by its nature. With respect to Motorola, Confidential Information will also include products and Services, and Documentation, as well as any other information relating to the products and Services. The nature and existence of this Cyber Addendum are considered Confidential Information of the Parties. In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by Discloser by submitting a written document to Recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

5.1.2. During the term of this Cyber Addendum, the parties may provide each other with Confidential Information. All Deliverables will be deemed to be Motorola's Confidential Information. Each party will: maintain the confidentiality of the other party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but those precautions will be at least the same degree of care that the receiving party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Cyber Addendum or pursuant to the license granted immediately below.

5.1.3. The disclosing party owns and retains all of its Proprietary Rights in and to its Confidential Information, except the disclosing party hereby grants to the receiving party the limited right and license, on a non-exclusive, irrevocable, and royalty-free basis, to use the Confidential Information for any lawful business purpose in the manner and to the extent permitted by this Cyber Addendum.

5.2. PROPRIETARY RIGHTS; DATA; FEEDBACK.

5.2.1 DATA DEFINITIONS. The following terms will have the stated meanings: “DIR Customer Contact Data” means data Motorola collects from DIR Customer, its Authorized Users, and their end users for business contact purposes, including marketing, advertising, licensing and sales purposes; “Service Use Data” means data generated by DIR Customer’s use of the Services or by Motorola’s support of the Services, including personal information, threat data, security threat intelligence and mitigation data, vulnerability data, threat scenarios, malicious and third-party IP information, malware, location, monitoring and recording activity, product performance and error information, threat signatures, activity logs and date and time of use; “DIR Customer Data” means DIR Customer data, information, and content, including images, text, videos, documents, audio, telemetry and structured data base records, provided by, through, or on behalf of DIR Customer, its Authorized Users, and their end users through the use of the Services. DIR Customer Data does not include DIR Customer Contact Data, Service Use Data, or information from publicly available sources or other Third-Party Data or Motorola Data or anonymized or generalized data. For avoidance of doubt, so long as not specifically identifying the DIR Customer, DIR Customer Data shall not include, and Motorola shall be free to use, share and leverage security threat intelligence and mitigation data generally, including without limitation, third party threat vectors and IP addresses, file hash information, domain names, malware signatures and information, information obtained from third party sources, indicators of compromise, and tactics, techniques, and procedures used, learned or developed in the course of providing services; “Third-Party Data” means information obtained by Motorola from publicly available sources or its third party content providers and made available to DIR Customer through the products or Services; “Motorola Data” means data owned or licensed by Motorola; “Feedback” means comments or information, in oral or written form, given to Motorola by DIR Customer or Authorized Users, including their end users, in connection with or relating to the products or Services; and “Process” or “Processing” means any operation or set of operations which is performed on personal information or on sets of personal information, whether or not by automated means, such as collection, recording, copying, analyzing, caching, organization, structuring, storage, adaptation, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

5.2.2. Motorola Materials. DIR Customer acknowledges that Motorola may use or provide DIR Customer with access to software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which Motorola has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by Motorola or another party) (collectively, “Motorola Materials”). The Services, Motorola Data, Third-Party Data, and Documentation, are considered Motorola Materials. The Motorola Materials are the property of Motorola or its licensors, and Motorola or its licensors retain all right, title and interest in and to the Motorola Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights). For clarity, neither this Cyber Addendum nor the Primary Agreement grants to DIR Customer any shared development rights in or to any Motorola Materials or other intellectual property, and DIR Customer agrees to execute any documents and take any other actions reasonably requested by Motorola to effectuate the foregoing. Motorola and its licensors reserve all rights not expressly granted to DIR Customer, and no rights, other than those expressly granted herein, are granted to DIR Customer by implication, estoppel or otherwise. DIR Customer will not modify, disassemble, reverse engineer, derive source code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Services or other Motorola Materials, or permit any third party to do so.

5.2.3 Ownership of DIR Customer Data. DIR Customer retains all right, title and interest, including intellectual property rights, if any, in and to DIR Customer Data. Motorola acquires no rights to DIR Customer Data except those rights granted under this Cyber Addendum including the right to Process and use the DIR Customer Data as set forth in Section 5.2.4 – Processing DIR Customer Data below. The Parties agree that with regard to the Processing of personal information which may be part of DIR Customer Data, DIR Customer is the controller and Motorola is the processor, and may engage sub-processors pursuant to Section 5.2.4.3 – Sub-processors.

5.2.4 Processing DIR Customer Data.

5.2.4.1. Motorola Use of DIR Customer Data. To the extent permitted by law, DIR Customer grants Motorola and its subcontractors a right to use DIR Customer Data and a royalty-free, worldwide, non-exclusive license to use DIR Customer Data (including to process, host, cache, store, reproduce, copy, modify, combine, analyze, create derivative works from such DIR Customer Data and to communicate, transmit, and distribute such DIR Customer Data to third parties engaged by Motorola) to (a) perform Services and provide products under the Cyber Addendum, (b) analyze the DIR Customer Data to operate, maintain, manage, and improve Motorola products and services, and (c) create new products and services. Any additional or alternate instructions must be agreed to according to the change order process. DIR Customer represents and warrants to Motorola that DIR Customer's instructions, including appointment of Motorola as a processor or sub-processor, have been authorized by the relevant controller.

5.2.4.2 Collection, Creation, Use of DIR Customer Data. DIR Customer further represents and warrants that the DIR Customer Data, DIR Customer's collection, creation, and use of the DIR Customer Data (including in connection with Motorola's Services), and Motorola's use of such DIR Customer Data in accordance with the Cyber Addendum, will not violate any laws or applicable privacy notices or infringe any third-party rights (including intellectual property and privacy rights). DIR Customer also represents and warrants that the DIR Customer Data will be accurate and complete, and that DIR Customer has obtained all required consents, provided all necessary notices, and met any other applicable legal requirements with respect to collection and use (including Motorola's and its subcontractors' use) of the DIR Customer Data as described in the Cyber Addendum.

5.2.4.3 Sub-processors. DIR Customer agrees that Motorola may engage sub-processors who in turn may engage additional sub-processors to Process personal data in accordance with this Cyber Addendum. When engaging sub-processors, Motorola will enter into agreements with the sub-processors to bind them to data processing obligations to the extent required by law.

5.2.5. Data Retention and Deletion. Except for anonymized DIR Customer Data, Motorola will delete all DIR Customer Data following termination or expiration of this Cyber Addendum, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of DIR Customer Data must be made by DIR Customer to Motorola in writing before expiration or termination of this Cyber Addendum. Motorola will have no obligation to retain such DIR Customer Data beyond expiration or termination unless the DIR Customer has purchased extended storage from Motorola through a mutually executed agreement.

5.2.6. Service Use Data. DIR Customer understands and agrees that Motorola may collect and use Service Use Data for its own purposes, including the uses described below. Motorola may use Service Use Data to (a) operate, maintain, manage, and improve existing and create new products and services, (b) test products and services, (c) to aggregate Service Use Data and combine it with that of other users, and (d) to use anonymized or aggregated data for marketing, research or other business purposes. Service Use Data may be disclosed to third parties. It is DIR Customer's responsibility to notify Authorized Users of Motorola's collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect

to such collection and use, and DIR Customer represents and warrants to Motorola that it has complied and will continue to comply with this Section.

5.2.7. **Third-Party Data and Motorola Data.** Motorola Data and Third-Party Data may be available to DIR Customer through the Services. DIR Customer will not, and will ensure its Authorized Users will not: (a) use the Motorola Data or Third-Party Data for any purpose other than DIR Customer's internal business purposes; (b) disclose the data to third parties; (c) "white label" such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (f) modify such data or combine it with DIR Customer Data or other data or use the data to build databases. Any rights granted to DIR Customer or Authorized Users with respect to Motorola Data or Third-Party Data will immediately terminate upon termination or expiration of this Cyber Addendum. Further, Motorola or the applicable Third-Party Data provider may suspend, change, or terminate DIR Customer's or any Authorized User's access to Motorola Data or Third-Party Data if Motorola or such Third-Party Data provider believes DIR Customer's or the Authorized User's use of the data violates the Cyber Addendum, applicable law or Motorola's agreement with the applicable Third-Party Data provider. Upon termination of DIR Customer's rights to use any Motorola Data or Third-Party Data, DIR Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to Motorola. Notwithstanding any provision of this Cyber Addendum to the contrary, Motorola will have no liability for Third-Party Data or Motorola Data available through the Services. Motorola and its Third-Party Data providers reserve all rights in and to Motorola Data and Third-Party Data.

5.2.8. **Feedback.** Any Feedback provided by DIR Customer is entirely voluntary, and will not create any confidentiality obligation for Motorola, even if designated as confidential by DIR Customer. Motorola may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to DIR Customer or Authorized Users and DIR Customer represents and warrants that it has obtained all necessary rights and consents to grant Motorola the foregoing rights.

5.2.9. **Improvements.** The Parties agree that, notwithstanding any provision of this Cyber Addendum, all fixes, modifications and improvements to the Services or products conceived of or made by or on behalf of Motorola that are based either in whole or in part on the Feedback, DIR Customer Data, or Service Use Data (or otherwise) are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Motorola. DIR Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to Motorola.

5.2.10 **Deliverables.** Deliverables, if any, will be deemed Confidential Information. Provided that Client has paid all fees in full under the applicable SOW, Motorola licenses DIR Customer the use of the Deliverables for Client's internal business purposes only. Motorola Materials, to the extent incorporated in the Deliverables or otherwise utilized in a SOW or in the performance of this Cyber Addendum, are and will remain the sole and exclusive property of Motorola. No license to use Motorola Materials is granted herein or by licensing of the Deliverables.

5.2.11 **Documentation.** Products and Services may be delivered with documentation for equipment, software products, Services or data that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information (collectively, "Documentation"). Documentation is and will be owned by Motorola. Motorola hereby grants DIR Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Services.

5.2.12 **Authorized Users.** DIR Customer will ensure its employees and Authorized Users comply with the terms of this Cyber Addendum and will be liable for all acts and omissions of its employees and Authorized Users. DIR Customer is responsible for the secure management of Authorized Users'

names, passwords and login credentials for access to products and Services. "Authorized Users" are DIR Customer's employees, full-time contractors engaged for the purpose of supporting the products and Services that are not competitors of Motorola or its affiliates, and the entities (if any) specified in a SOW or otherwise approved by Motorola in writing (email from an authorized Motorola signatory accepted), which may include affiliates or other DIR Customer agencies.

5.2.13 Motorola as a Controller or Joint Controller. In all instances where Motorola acts as a controller of data, it will comply with the applicable provisions of the Motorola Privacy Statement at https://www.motorolasolutions.com/en_us/about/privacy-policy.html#privacystatement, as may be updated from time to time. Motorola holds all DIR Customer Contact Data as a controller and shall Process such DIR Customer Contact Data in accordance with the Motorola Privacy Statement. In instances where Motorola is acting as a joint controller with DIR Customer, the Parties will enter into a separate addendum to allocate the respective roles as joint controllers.

Section 6 WARRANTY

6.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that (a) it has the right to enter into the Cyber Addendum and perform its obligations hereunder, and (b) the Cyber Addendum will be binding on such Party.

6.2. Motorola Warranties. Subject to the disclaimers and exclusions below, Motorola represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable SOW; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in the Primary Agreement and subsection (a) above, subscription or recurring Services are not warranted but rather will be subject to the requirements of the applicable SOW.

6.3. Warranty Claims; Remedies. To assert a warranty claim, DIR Customer must notify Motorola in writing of the claim prior to the expiration the warranty period set forth in this Cyber Addendum. Upon receipt of such claim, Motorola will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming product or re-perform any non-conforming Service, at its option. Motorola's warranties are extended by Motorola to DIR Customer only, and are not assignable or transferrable.

6.4 Reserved.

6.5 DIR Customer acknowledges, understands and agrees that the Services and products or equipment provided by or used by Motorola to facilitate performance of the Services may impact or disrupt information systems. Except to the extent set forth in Section 6.2, Motorola disclaims responsibility for costs in connection with any such disruptions of and/or damage to DIR Customer's or a third party's information systems, equipment, voice transmissions, data and DIR Customer Data, including, but not limited to, denial of access to a legitimate system user, automatic shut-down of information systems caused by intrusion detection software or hardware, or failure of the information system resulting from the provision or delivery of the Service.

6.6 Pass-Through Warranties. Except as provided by the Primary Agreement, notwithstanding any provision of this Cyber Addendum, Motorola will have no liability for third-party software or hardware provided by Motorola; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, Motorola will pass through express warranties provided by such third parties.

Section 7 INDEMNIFICATION

Section 8 LIMITATION OF LIABILITY

Reserved.

SECTION 9 DEFAULT AND TERMINATION

9.1 Default by a Party. Reserved.

9.2. Failure to Cure. Reserved.

9.3 Termination. Motorola may terminate this Cyber Addendum or SOWs hereunder, or suspend delivery of subscription Services or Services, immediately upon notice to DIR Customer if (a) DIR Customer breaches the Cyber Addendum or a SOW requirement relating to its responsibilities, license obligations, or restrictions relating to the Services or Documentation, or, or (b) it determines that DIR Customer's use of the Services poses, or may pose, a security or other risk or adverse impact to any Services, Motorola, Motorola's systems, or any third party (including other Motorola DIR Customers). DIR Customer acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Services and Documentation, and that DIR Customer's breach of the Cyber Addendum will result in irreparable harm to Motorola for which monetary damages would be inadequate. If DIR Customer breaches this Agreement, in addition to termination, Motorola will be entitled to all available remedies at law or in equity (including immediate injunctive relief).

9.4. Wind Down of Services. Reserved.

Section 10 DISPUTES

Reserved

Section 11 GENERAL

11.1. Taxes. The Cyber Addendum or SOW price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by DIR Customer except as exempt by law. If Motorola is required to pay any of those taxes, it will send an invoice to DIR Customer and DIR Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within thirty (30) days after the date of the invoice. Motorola will be solely responsible for reporting taxes on its income or net worth.

11.2. Assignment and Subcontracting. Reserved.

11.3. Third-Party Beneficiaries. The Cyber Addendum is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Cyber Addendum will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software products will be a direct and intended third-party beneficiary of this Cyber Addendum.

11.4 Waiver. Failure or delay by either party to exercise a right or power will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

11.5. Severability. If any provision of the Cyber Addendum is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Cyber Addendum will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.

11.6. Independent Contractors. Each party will perform its duties under this Cyber Addendum as an independent contractor. The parties and their personnel will not be considered to be employees or agents of the other party. Nothing in this Cyber Addendum will be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Cyber Addendum will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

11.7. Headings and Section References. The section headings in this Cyber Addendum are inserted only for convenience and are not to be construed as part of this Cyber Addendum or as a limitation of the scope of the particular section to which the heading refers. This Cyber Addendum will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

11.8. Governing Law. Reserved.

11.9. Entire Addendum. Reserved.

11.10. Notices. Reserved.

11.11. Compliance with Applicable Laws. Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Cyber Addendum. The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services may change. Changes to existing Services required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

11.12 Personnel assigned by Motorola to perform the Services or provide the Deliverables to DIR Customer shall be employees of Motorola, its affiliates or their contractors. During the term of this Cyber Addendum and for twelve (12) months thereafter, DIR Customer will not actively solicit the employment of any Motorola personnel who is involved directly with providing any of the Services.

11.13. Authority to Execute Addendum. Each party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Cyber Addendum and to perform its duties under this Cyber Addendum; the person executing this Cyber Addendum on its behalf has the authority to do so; upon execution and delivery of this Cyber Addendum by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Cyber Addendum does not violate any bylaw, charter, regulation, law or any other governing authority of the party. The terms of this Cyber Addendum may be amended or modified only by a written instrument signed by authorized representatives of both Parties.

11.14. Survival of Terms. The following provisions survive the expiration or termination of this Cyber Addendum for any reason: if any payment obligations exist, Section 3 (SOW Price or Fee Schedule); Section 5 (Confidential Information and Proprietary Rights); Section 6 ((Warranty); Section 7 (Indemnification); Section 8 (Limitation of Liability); Section 9 (Default and Termination); Section 10 (Disputes); and all General provisions in Section 11.

In witness whereof, the parties hereto have executed this Cyber Addendum as of the Effective Date.

MOTOROLA

DIR CUSTOMER

BY: _____
NAME: _____
TITLE: _____
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

Exhibit A-1
Statement of Work



Department of Information Resources

**Request for Offer
DIR-TSO-TMP-426**

Motorola Branded Products and Related Services

Issued: 11/14/2017

Initial Responses Due: 01/09/2018 02:00 PM (CT)

Department of Information Resources
Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426

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Exhibit A – Vendor Information Form

Exhibit B – Vendor History and Experience

Exhibit C – Contract Marketing and Support Plan

Appendix D – Historically Underutilized Business (HUB) Subcontracting Plan

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1. Introduction

1.1. Purpose

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

As a result of this RFO, DIR expects to receive and evaluate responses and select one or more qualified Vendors with whom to enter into negotiations. Section 5 of this RFO contains more information regarding the response evaluation and Vendor selection process. DIR reserves the right to 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 contract vehicle that satisfies statewide procurement requirements for Motorola branded hardware and related services Contracts and improves the efficiency of the procurement process by shortening the time required to procure Motorola branded Products.

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 Information Technology Acquisition

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

DIR combines the buying power of authorized Customers to obtain volume-discounted pricing for selected technology products and services. In addition to offering volume-discounted pricing, DIR created the Cooperative Contracts (Co-op Contracts) Program to make it easier for Customers to acquire these products and services. Customers place

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orders with and issue payments directly to the Vendors participating in the Co-op Contracts Program. Subject to DIR rights set forth in Sections 5.4 and 5.5 of this RFO, DIR will award and negotiate base contract documents with Vendors as a result of this RFO. Customers contact the Vendor for product and/or services and pricing information, negotiate their own service level agreements and additional terms and conditions, if any, and send their purchase orders (with the DIR contract number) and payments directly to the participating awarded Vendor, not to DIR. Information regarding the Co-op Contracts Program is located on DIR's Web site at <http://dir.texas.gov/View-About-DIR/Pages/Content.aspx?id=41>.

1.2.2 Texas Government Code, Section 2157.068

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

Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is a commercially available program that operates hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements and may include Software provided as a service. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staff augmentation, training, maintenance and subscription services. Seat management is a service through which a state agency transfers its responsibilities to a Vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

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

Institutions of higher education, K-12, and local governments are not required to purchase IT commodities from DIR, but may do so voluntarily. Information regarding Texas Government Code §2157.068, including processes and guidelines, is located on DIR's Web site at: <http://dir.texas.gov/View-Contracts-AndServices/Pages/Content.aspx?id=25>

1.2.3 Cost Avoidance Performance Measures

As part of its performance measures reported to state leadership, DIR must show the cost avoidance realized by the State for the products and services obtained under DIR contracts. Cost avoidance is the difference between the negotiated DIR contract price and

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the prevailing market price.

1.2.4 Cost Recovery

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

1.2.5 Historical Sales

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

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

1.2.6 Current Contracts

DIR currently has multiple contracts with either the manufacturer or the resellers to provide Motorola branded products and related services. The total volume of products sold through the contracts is approximately \$49,003,923.

1.2.7 Exclusions

Vendors currently holding the DIR contracts with Motorola branded products are excluded from responding to this RFO (DIR-TSO-TMP-426).

In addition, the following products and services are excluded which are not in the scope

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of this RFO:

- 1) Internet services
- 2) Data plan
- 3) Professional or consulting services as defined in Chapter 2254 of the Texas Government Code

In the event that DIR identifies other Publishers to be excluded, the Publisher names will be included in a future addendum. Vendors should submit a written request should they have questions about a specific publisher on a current DIR contract.

2. Vendor Information System (VIS) Portal - BidStamp

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

2.1. Solicitation Response Requirement

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

2.2. VIS Account Request Process

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

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

3. Scope

3.1. Products

A. Motorola Branded Products

All Motorola Branded Products include, but not limited to, Hardware, Software, peripherals, accessories manufactured or licensed under the Motorola brand name.

B. Third Party Products

Third party products may be proposed as an option and will be awarded at the discretion of

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DIR.

Third Party Products are those hardware, peripherals, accessories and software by other manufacturers or publishers that may be used as an attachment or embedded within an Motorola device to create, enhance or extend the functionality of the Motorola branded device; or to create, enhance or extend the functionality of the authorized third- party Product which relies on an Motorola device platform to function. For example, and not by way of limitation, Device Security and Control Software such as JAMF or Accessories such as OtterBox.

By Vendor proposing the third-party products shall attest that Vendor has authorization from the manufacturer(s) to resell the products on a resulting DIR contract. At any time during the contract term, DIR may require Vendor to provide a Letter of Authorization from the manufacturer stating that Vendor has the authorization to sell that manufacturer's products and/or that the Vendor has the certifications to provide the related services on a DIR contract.

After contract award, Vendor shall only offer third-party Products that have been proposed and awarded on their DIR contract. Vendor may incorporate changes to their authorized third-party Product offerings; however, any changes must be within the scope described in this section herein. Vendor may not add a manufacturer's product that was not included in the Vendor's response to the solicitation without pre-approval of DIR.

3.1.1 Pricing

Any Vendor responding to this RFO must submit specific pricing and discount for the products and related services requested herein. For the purposes of obtaining pricing and evaluating the responses to this RFO, the products and related services, if any, shall be priced and discounted as instructed in this solicitation, DIR-TSO-TMP-426.

Vendors are highly encouraged to propose the pricing by Product Category. Vendors must offer only one discount for each product category proposed. The discount for each product category will be applied to all products within that product category in order to determine the net DIR Customer price. The price to the DIR Customer shall include all shipping/handling fees and DIR Administration Fee.

3.1.1.1 Volume Discount

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

In addition to purchases, DIR and any Vendor awarded a Contract as a result of this RFO may agree to provisions that allow leasing of the products offered under the resulting Contract. Bid Package 8, Master Operating Lease Agreement and Bid Package 9, Master Lease Agreement will be the prevailing lease documents under any DIR contract award.

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DIR is not soliciting this RFO for its own agency. DIR establishes statewide master contracts for use by DIR eligible customers. DIR competitively bids for information technology products and services.

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

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

3.2. Related Services

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

3.3. Emerging Technologies

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of training services for emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of DIR-TSO-TMP-426. Vendor may propose such products and related services throughout the term of the contract. Pricing and terms will be negotiated upon DIR agreement. Any determination will be at DIR's sole discretion and any decision will be final.

3.4. Threshold and SOW Requirements

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

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

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

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

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

3.5. Electronic and Information Resources (EIR) Accessibility

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

Accordingly, **all Vendors must submit completed VPAT form** (Bid Package 6) **or links to completed VPATs located on manufacturer websites for each proposed product or product family prior to an award for the proposed product or product family.** Instructions on how to complete a VPAT® can be found on [DIR's website](#).

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

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

Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org/public-policy/accessibility>. Vendors that claim their products are exempt from accessibility requirements must present that position to DIR as a question during the question and answer period of the solicitation.

In addition to the VPAT requirement, vendors must complete the **Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment**. (Bid Package 5)

3.6. Form of Contract

3.6.1 Sample Contract and Terms Negotiation

Negotiation: The final terms and conditions of any contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that shall be included in any awarded contract are contained in the sample *Contract for Products and Related Services* attached as "Bid Package 3" and the *Standard Terms and Conditions for Products and Related Services Contracts* attached as "Bid Package 4" to the posting for this RFO, requisition

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number DIR-TSO-TMP-426, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>

3.6.2 Proposed Changes and Exceptions

Caution: Vendors' Responses may be disqualified if their exceptions are excessive, or if they except to non-negotiable terms, as described below. Item 11 of Exhibit A contains the format for Vendor to note any exception to any provision, term, or condition specified in the *Contract for Products and Related Services and Standard Terms and Conditions for Products and Related Services Contracts*. Vendor should provide any proposed changes to contract language in redline in the "Proposed Language (redline)" column of the chart in Item 11 of Exhibit A. **Vendors may request exceptions to standard contract terms and conditions; however, (1) where noted, exceptions to certain terms and conditions will not be allowed. If Vendor is unable to comply with these provisions, the Vendor's response may be subject to disqualification from further consideration for this solicitation; (2) DIR in its discretion may or may not accept the Vendor's requested exceptions; and (3) material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) may render the Offer non-responsive and may result in rejection of the bid.** An explanation as to why the Vendor cannot comply with the provision, term, or condition and proposed alternative language **must** be included in the response. If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at some later date.

DIR anticipates a contract with an initial term of two years renewable automatically in one-year increments for three (3) additional years under the same terms and conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modifications of terms or not renew. In the event of prolonged contract negotiations DIR may in its discretion offer Vendor a shorter contract term.

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

4. General Information

4.1. Point of Contact

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

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

4.2. Contact with DIR Staff

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Upon issuance of this RFO, employees and representatives of DIR other than the Point of Contact identified in Section 4.1 will not discuss the contents of this RFO with any Vendor or their representatives. **Failure of a Vendor and any of its representatives to observe this restriction may result in disqualification of any related response.** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

4.3. Anticipated Schedule

4.3.1 RFO Schedule

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

Date/Time	Activity
11/14/2017	Publish RFO on Electronic State Business Daily
11/30/2017 10:00 AM (CT)	Optional Vendor Conference
12/04/2017 04:00 PM (CT)	Deadline for submitting questions
12/11/2017 04:00 PM (CT)	Estimated Date for posting answers to questions on the ESBD
01/09/2018 02:00 PM (CT)	Deadline for DIR to receive Vendor references
01/09/2018 02:00 PM (CT)	Deadline for submitting responses to RFO
1/10/2018 – until completed	Evaluation of responses, oral presentations (if requested), negotiation and contract execution

4.3.2 Vendor Conference

A webinar for optional Vendor Conference will be held on the date and time specified in RFO Section 4.3.1 above. To reserve a webinar seat, register at:

<https://attendee.gotowebinar.com/register/3738808312996693250>

After registering, you will receive a confirmation email containing information about joining the Webinar.

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

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submission deadline.

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

4.3.3 Written Questions and Official Answers

Vendors shall submit all questions regarding this RFO through the BidStamp VIS. **Questions regarding this RFO will be accepted until the date and time specified above in Section 4.3.1, RFO Schedule.** Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-426 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 ESD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESD will in no way release the selected Vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

4.4. Historically Underutilized Businesses

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

1. 11.2% for heavy construction other than building contracts;
2. 21.1% for all building construction, including general contractors and operative builders' contracts;
3. 32.9% for all special trade construction contracts;
4. 23.7% for professional services contracts;
5. 26.0% for all other services contracts;
6. 21.1% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161.252(b), and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

HUBs are strongly urged to respond to this RFO. Under Texas law, state agencies are required to

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make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. Vendors who meet the qualifications are strongly encouraged to apply for certification as HUBs.

4.4.1 HUB Subcontracting Plan

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

4.4.2 HUB Continuing Performance

Any contracts awarded as a result of this RFO shall include reporting responsibilities related to HUB subcontracting. Awarded Vendors may not change any subcontractor without submitting a revised HUB Subcontracting Plan (HSP). Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation.

4.4.3 HUB Resources Available

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

4.5. Vendor Qualifications

4.5.1 Authorized Vendors

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

- 1) Vendor who will sell directly to Customers through a DIR Contract. Vendors responding to this RFO who is not the Manufacturer must supply a signed letter from the manufacturer certifying that Vendor is an authorized reseller of Manufacturer's products to DIR customers, and sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. **Signed letter of authorization**

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must be submitted with Vendor's proposal.

- 2) Vendor who will execute a DIR Contract and designate one or more qualified dealers or resellers (Order Fulfillers) to sell directly to Customers on its behalf. Vendor may also sell directly to Customers. Vendors responding to this RFO must supply a signed letter from the Manufacturer certifying that Vendor is an authorized reseller of Manufacturer's products to DIR customers, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. **Signed letter of authorization must be submitted with Vendor's proposal.**

Unsigned letter, typed signature, or failure to submit the manufacturer's authorization letter may result in elimination of the related proposal from the solicitation process.

Federal Requirements

- 1) State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Vendor listed in the prohibited Vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Vendor awarded a Contract as a result of this RFO must agree that if at any time during the term of the contract the Vendor is listed on the Terrorism List, the Vendor shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure any Vendor awarded a contract as a result of the RFO remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the contract without recourse in the event Vendor becomes listed on the Terrorism List.
- 2) Should any Vendor or its principals awarded a Contract as a result of this RFO become suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration, the Vendor's contract will be terminated without recourse.
- 3) Vendor shall comply with the requirements of the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

4.5.2 Vendor Performance and Debarment

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

http://comptroller.texas.gov/procurement/prog/vendor_performance/debarred/

4.5.3 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

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to Section 12 of Exhibit A to the RFO, all of the following:

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

4.6. Response Deadline and Submission Requirements

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

4.6.1 Official Timepiece

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

4.7. Response Format and Contents

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

4.7.2 Mandatory Response Contents

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

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

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

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

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

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

4) **HUB Subcontracting Plan Forms – Exhibit D of this RFO**

All Vendors, **INCLUDING THOSE WITH HUB DESIGNATION AND THOSE THAT DO NOT PLAN TO USE SUBCONTRACTORS**, must submit a HUB Subcontracting Plan. **The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal.** Refer to Section 4.4 for more information regarding HUB subcontracting. **Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors. The signed copy of the HSP must be uploaded and submitted in the BidStamp VIS.**

5) **Product Pricing**

Vendor shall provide a detailed description and the specific pricing for any products and related services that Vendor is proposing to offer in response to this RFO **via the Automated pricing Form in the BidStamp VIS.** Vendor shall provide specific pricing for the products and related services applicable to their response.

6) **Signed letter from the Manufacturer** certifying that Vendor is an authorized reseller of Manufacturer's products.

7) **Software License Agreements and/or Service Agreements** (if applicable)

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

8) **Vendor ICT Accessibility Policy Assessment (PDAA)– Bid Package 5**

Vendors must provide the PDAA form (Bid Package 5) as requested in Section 3.5, Electronic and Information Resources (EIR) Accessibility, of this RFO.

4.7.3 References

Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included on the questionnaire. Vendor may submit the Vendor Reference Questionnaire to companies or government agencies through the BidStamp VIS. DIR is not responsible for undeliverable e-mails or for non-responsive references. Vendor's references will be evaluated in accordance with Section 5.2.2. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The

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Vendor may not submit the reference form to DIR. References may be contacted for clarification at DIR's discretion.

4.7.4 Accessibility of Electronic Response Documents

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

4.8. Rejection of Responses

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

4.9. Right to Amend or Withdraw RFO

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

Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-426 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 ESD will in no way release the vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO Pre-agreement Costs.

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

4.10. Ownership of Responses

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

4.11. Public Information

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. Vendor may not mark its complete proposal "copyrighted" or mark every page as proprietary or confidential but if a Vendor believes that its response, or

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parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the Vendor must specify which exception(s) are applicable and provide detailed reasons substantiating the exception(s).

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

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

5. Evaluation, Negotiations, and Award

5.1. Evaluation of Responses

DIR will review proposals to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. All proposals determined to be responsive will go through a financial review and a HSP review. The financial review and HSP review are a pass/fail determination that is final. Only responses that receive a passing grade will proceed to the evaluation. 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 the evaluation process is completed, DIR will send a written notice to each Vendor for weather they will proceed to negotiation or not selected for negotiation.

5.2. Evaluation Criteria

5.2.1 Pass/Fail Criteria

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

1. DUNS Number and report is a Pass/Fail review conducted by the Finance Group (Exhibit A, Item 13)
2. Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
 - a. A score of less than 90% in the Vendor Performance System;
 - b. Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports,
 - c. Having purchase orders that have been cancelled in the previous 12 months for non-performance (including but not limited to late delivery, etc.).
3. Completion of HUB Subcontract Plan (Exhibit D).

5.2.2 Weighted Evaluation Criteria

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

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- 45% - Pricing
- 30% - Vendor History and Experience and References in providing the products and services requested. (Exhibit B of Bid Package 1, and Vendor References)
- 25% - Vendor's plan for supporting the Contract – Exhibit C

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).

The State reserves the right to evaluate the responses by item or category, groups of items or total bid, solution-based or other means (such as historical sales volumes or geographical needs) which it deems is in the best interest of the State based on a solicitation. The State may also reject any response, in whole or in part, or reject all responses if it determines pricing is considered in excess of current reasonable market prices or if the response is not considered to be reasonable or responsive. Initial evaluation will be based upon the percentages and factors of evaluation criteria provided above in this section. Vendor s are cautioned, to provide their best pricing in the initial response submitted because this will be used to determine the competitive range. If the best pricing is not provided it could result in the Vendor falling out of the competitive range and not being invited to Best and Final Offer process or being given any further consideration for a particular item, brand or group of products.

5.3. Oral Presentations, Best and Final Offer

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

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

5.4. Negotiations

At the conclusion of the evaluation, as described within Sections 4.1 through 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.

5.5. Award of Contract

DIR Executive Management shall make the decision to award any contracts, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final. Any award for this RFO shall be posted under requisition number via 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.

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

5.6. Vendor Protest Procedures

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

END OF RFO

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**Exhibit A
Vendor Information**

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

- 1) Company Name: _____

- 2) Comptroller of Public Accounts Vendor Identification Number: _____

- 3) Principal place of business
Address:
City:
State:
Zip Code:

- 4) Facility responsible for servicing the contract
Address:
City:
State:
Zip Code:

- 5) Contact Person regarding Vendor's response to the RFO
Name:
Address:
City, State, Zip:
Phone Number:
Fax:
Email:

- 6) Contact Person responsible for contract negotiation
Name:
Address:
City, State, Zip:
Phone Number:
Fax:
Email:

- 7) Officer or Agent empowered to contractually bind the Vendor:
Name:
Title:
Address:
Phone Number:
Fax:
Email:

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- 8) Indicate whether or not your company is a certified Historically Underutilized Business (HUB) with the State of Texas by the CPA.
 _____Yes _____No
- 9) Provide the year in which your company was created/incorporated.
- 10) Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included on the . DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. Should this occur, the reference will be scored with a zero (0).
- 11) List below by subsection all exceptions to the *Contract for Services* and *Standard Terms 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.**

Section	Section Title	Explanation of Exception	Proposed Language (redline)

- 12) Vendor and Subcontractor Conflict of Interest Disclosure
 List below all current or former employees of Vendor and/or proposed Vendor personnel with conflict of interests as follows:

1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and

2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.

Vendor Personnel:

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

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Subcontractor personnel:

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

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

13) Proof of Financial Stability.

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

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

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

15) For each manufacturer, Vendor is proposing in the RFO, indicate whether or not the manufacturer has a program to recycle the manufacturer's computer equipment and if they recycle computers from other manufacturers. If you are a reseller, you must indicate whether your company has a recycling program or will use the manufacturer's recycling program for the products listed in this RFO.

Manufacturer Name _____
 Recycles their own computers? _____ Yes _____ No
 Recycles other manufacturer's computers? _____ Yes _____ No
 If Reseller, check one that applies:
 _____ Will use Manufacturer's program
 _____ Will use Respondent's own program

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

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16) Statement of Compliance

A. Checklist for the RFO

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

A completed checklist shall not be binding on DIR's administrative review for compliance with the mandatory response contents specified in this RFO. As step one of the evaluation process, DIR will review all responses to ensure compliance with the mandatory response contents as specified in Section 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
Responses must be submitted in the BidStamp VIS Portal	
Mandatory Response Contents	
Vendor Information – Exhibit A	
Vendor History and Experience – Exhibit B	
Contract Support Plan – Exhibit C	
Manufacturer Letters, Section 4.5.1	
HUB Subcontracting Plan Forms – BidStamp VIS Form (Print, sign and upload)	
Pricing Form (BidStamp VIS Portal)	
Accessibility Documentation (PDAA), Section 4.7.2 RFO Requirement	
Software License Agreements and/or Service Agreement(s) <i>(if applicable)</i>	

B. Certification Statement

The undersigned hereby certifies on behalf of insert company name here that DIR-TSO-TMP-426;has been read and understood. In submitting its response insert company name here represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) To the extent applicable to this scope of this Solicitation, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services offered in the response to this solicitation number DIR-TSO-TMP-426;
- iv) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- v) as of the date of signature below, Vendor is not listed in the prohibited Vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- vi) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

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- vii) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (viii) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
- (ix) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;
- (x) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- (xi) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (xii) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award; .Enter the name and Social Security Numbers for each person below (alternatively, if this section applies, Vendor may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

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

- xiii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiv) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
- (xv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;
- (xvi) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xvii) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;
- (xviii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;

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

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

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

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

Signature of Officer or Agent empowered to contractually bind the Vendor

Date

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

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

RESPONDENT NAME: _____

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

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

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

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

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

To company providing the reference:

Enter name of company providing the reference here

You are hereby requested to provide a business reference for:

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

to the:

Texas Department of Information Resources
Solicitation Evaluation Team

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

Signed the _____ day of _____, 20____.

(Respondent Signature)

(Respondent Printed Name)

(Respondent Title)

Signed the _____ day of _____, 20____.

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

(Key Staff Printed Name)

**Department of Information Resources
Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426**

**Exhibit B
Vendor History and Experience**

- 1) Provide a detailed history of your company.
- 2) Provide the number of years your company has sold the Motorola branded products and related services requested in this RFO.
- 3) Provide the number of years your company has sold the Motorola branded products and related services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.
- 4) Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the Motorola branded products and related services listed in this RFO from your company within the last 12 months.

_____Yes _____No

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

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

_____Yes _____No

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

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

_____Yes _____No

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

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

_____Yes _____No

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

END OF EXHIBIT B

**Department of Information Resources
Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426**

**Exhibit C
Contract Marketing and Support Plan**

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

- 1) Describe your company's strategy for marketing and selling the services listed in this RFO to eligible DIR Customers. A Contract Marketing Plan, as an example, would list the marketing elements Vendor would use like publishing on DIR website, email signature tag, Trade Publication Advertisements etc.
- 2) Describe your company's strategy for providing sales, order processing, and support of eligible DIR Customers throughout the State of Texas.
- 3) Provide the projected total sales of the services listed in this RFO that your company anticipates making to eligible DIR Customers within the next 12 months. If available, show the projected sales breakdown between the following segments: State and Local Governments, Higher Education, and K-12.
- 4) Do you have other existing DIR Contracts? If yes, list those existing DIR contracts, and explain how this contract will impact the marketing and support of your other contracts? How will your other contracts impact the marketing of this contract, should you receive an award?
- 5) Provide an overview of the management and customer relationship team that will be responsible for managing the State's relationship in the event of being awarded a contract. Address the following:
 - a. Describe the geographical reach of the Vendor, teaming partners and subcontractors (if any), to include, at a minimum, locations of corporate and branch offices as well as locations where work is currently taking place. Explain how these locations and any proposed new locations will be used in the performance of this contract.
 - b. Provide names, titles, prior account management experience for accounts of the State's size and type.
 - c. Provide an organization chart identifying the chain of command for managing this contract, including resource sourcing responsibility, and organization components that support this contract. In a narrative, describe how the Vendor will manage the contract to ensure uninterrupted, high quality performance and overall contract effectiveness.

END OF EXHIBIT C

RFO DIR-TSO-TMP-426
MOTOROLA BRANDED PRODUCTS AND RELATED SERVICES
EXHIBIT D
HUB SUBCONTRACTING PLAN

HUB Subcontracting Plan Form is provided in the BidStamp VIS portal

<https://dircommunity.force.com/BidStamp>

DIR-TSO-TMP-426: Motorola Branded Products and Related Services

Sample Bid Package 2 – Pricing Sheet

Pricing Form must be completed in BidStamp.

MOTOROLA BRANDED PRODUCTS				
Product Category	DIR Customer Discount % off MSRP	Product Description	Manufacturer Itemized Price List	
Product Categories listed below are EXAMPLES Only. Respondent can alter the product category accordingly				
Data Subscriber Devices	20.00%	Data Subscriber Devices	See attached file	
Data Products/Applications				
Deployable Trailers				
Fixed Data				
Fixed Networks				
Software				
Fixed Stations				
Fixed Stations				
Fixed Station Controls				
Fixed Station Accessories				
Subscriber Units				
Mobile Radios				
Portable Radios				

Product Software Upgrades			
Radius Radios			
Secure Solutions			
Trunking Products and Systems			
Wireless Solutions			
RELATED SERVICES			
Service Descriptions	MSRP	DIR Customer Discount % off MSRP	DIR Price (Including Admin. Fee)
EXAMPLE: Training	\$100.00	30.00%	\$70.53

THIRD PARTY PRODUCTS (OPTIONAL)			
BRAND	Product Description	DIR Customer Discount % off MSRP	
EXAMPLE: Havis	Mobile Mounting Solutions for Motorola cameras	30.00%	

**DIR-TSO-TMP-426
Bid Package 3**

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR PRODUCTS AND RELATED SERVICES

VENDOR NAME

1. Introduction

A. Parties

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

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-426, on 11/14/2017, for Motorola Branded Products and Related Services. *DIR subsequently issued a BAFO opportunity on BAFO DATE.* Upon execution of this Contract, a notice of award for DIR-TSO-TMP-426 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-426, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-426, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-426, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-426, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In

the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then Appendix E or Appendix F, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the term, DIR and Vendor may extend the Contract, by amendment, for up to three (3) optional one-year terms. The contract will renew automatically in one-year increments for three (3) additional years under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to *insert product description here* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to *insert **SPECIFIC** services here* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

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

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is *insert number* percent (*insert number*%).

Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$insert dollars.

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

6. Notification

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

If sent to the State:

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

If sent to the Vendor:

Vendor Representative
Company Name
Address
City, State Zip
 Phone: () -
 Facsimile: () -
 Email:

7. Software License, Service and Leasing Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. rder Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Software License Agreement is the responsibility of the

Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

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

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix E of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

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

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

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

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

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

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

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

No exceptions have been agreed to by DIR and Vendor.

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: Hershel Becker

Title: Chief Procurement Officer

Date: _____

Office of General Counsel: _____

Bid Package 4: DIR-TSO-426

Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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

1. Contract Scope

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

2. No Quantity Guarantees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

3. Definitions

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

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

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

management staff or their designees.

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

4. General Provisions

A. Entire Agreement

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

B. Modification of Contract Terms and/or Amendments

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

C. Invalid Term or Condition

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

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

D. Assignment

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

E. Survival

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

F. Choice of Law

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

G. Limitation of Authority

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

H. Proof of Financial Stability

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

5. Intellectual Property Matters

A. Definitions

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

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

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

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

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

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

B. Ownership.

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

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

C. Further Actions.

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

D. Waiver of Moral Rights.

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

E. Confidentiality.

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

F. Injunctive Relief.

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

G. Return of Materials Pertaining to Work Product.

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

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

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

J. Agreement with Subcontracts.

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

K. License to Customer.

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

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

L. Vendor Development Rights.

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

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

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

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

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

necessary hardware, software and technology services.

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

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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

B. Use of Order Fulfillers

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

1) Designation of Order Fulfillers

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order 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 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 Filler information listed in Section 7.B.1.a above.

3) Order Filler Pricing to Customer

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

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

C. Product Warranty and Return Policies

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

D. Customer Site Preparation

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

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

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

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

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

2) Accurate and Timely Contract Information

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

3) Webpage Compliance Checks

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

4) Webpage Changes

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

5) Use of Access Data Prohibited

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

6) Responsibility for Content

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

F. DIR Logo

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

G. Vendor and Order Fulfiller Logo

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

H. Trade Show Participation

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

I. Orientation Meeting

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

J. Performance Review Meetings

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

K. DIR Cost Avoidance

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

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Customer Price

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

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

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

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

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

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

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

G. Changes to Prices

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

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

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

9. Contract Administration

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

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

1) State Contract Manager

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

2) Vendor Contract Manager

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

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

B. Reporting and Administrative Fees

1) Reporting Responsibility

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

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

2) Detailed Monthly Report

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

3) Historically Underutilized Businesses Subcontract Reports

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

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

4) DIR Administrative Fee

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

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

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

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

5) Accurate and Timely Submission of Reports

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

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

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

C. Records and Audit

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

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

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

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

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

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

D. Contract Administration Notification

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

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

10. Vendor Responsibilities

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

A. Indemnification

1) INDEPENDENT CONTRACTOR

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

2) ACTS OR OMISSIONS

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

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

3) INFRINGEMENTS

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

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

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

4) PROPERTY DAMAGE

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

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

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

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

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

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

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

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

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

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

D. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

E. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

F. Use of Subcontractors

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

its obligations under the Contract.

G. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

H. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

I. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

J. Background and/or Criminal History Investigation

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

K. Limitation of Liability

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

L. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

M. Prohibited Conduct

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

N. Required Insurance Coverage

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

1) Commercial General Liability

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

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

2) Workers' Compensation Insurance

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

3) Business Automobile Liability Insurance

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

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

O. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

P. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

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

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

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

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

T. Deceptive Trade Practices; Unfair Business Practices

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

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

U. Drug Free Workplace Policy

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

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

11. Contract Enforcement

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

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

B. Termination

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

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

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

b) Termination for Non-Appropriation by DIR

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

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

3) Termination for Convenience

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

4) Termination for Cause

a) Contract

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

b) Purchase Order

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

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

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

7) Vendor or Order Fulfiller Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Force Majeure

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

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

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

B. Handling of Written Complaints

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

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

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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



Department of Information Resources

**Request for Offer
DIR-TSO-TMP-426**

Motorola Branded Products and Related Services

Bid Package 5

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



Vendor ICT Accessibility Policy Assessment

This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organization. Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment substitute for other requested accessibility information such as VPATs.

All questions, inquiries, etc. regarding Bid Package 5, Vendor ICT Accessibility Policy (PDAA) should be directed to Jeff Kline: Phone: 512-463-3248 Email: Jeff.Kline@dir.texas.gov

Organization information

Organization name: _____
Organization address: _____
Responder contact information: _____
Date of assessment completion: _____

My organization is a (choose one or more if applicable)

- ☐ Manufacturer: My organization develops and sells its own ICT products / services
- ☐ Service Provider: My organization sells IT development services
- ☐ Integrator: My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
- ☐ Reseller or Catalog Supplier: Does not develop or have its own products, but offers COTS 3rd party products

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant

Response s

1. Develop, implement, and maintain an ICT accessibility policy.

0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)

1a. Having an ICT accessibility policy.

- 1 My organization is developing an ICT accessibility policy.
- 2 My organization is finalizing an ICT accessibility policy.
- 3 My organization has approved an ICT accessibility policy.

1b. Having appropriate plans in place to implement and maintain the policy.

- 1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
- 2 My organization has completed planning for initial implementation and maintenance of our accessibility policy.

3 My organization has approved plans for accessibility policy implementation and maintenance.

1c. Establishing metrics and tracking progress towards achieving compliance to the policy.

- 1 My organization is identifying metrics that can be used to gauge policy compliance.
- 2 My organization is collecting metrics and has begun designing progress reporting based on them.
- 3 My organization is tracking progress on policy adoption and continues to refine the metrics.

Section 1 Comments (Provide any comments or additional information on this section here.)

2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)

0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)

2a. Developing an organization wide governance system.

- 1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
- 2 My organization is finalizing plans that will result in an organization wide governance system.
- 3 My organization has approved plans for an organization wide governance system.

2b. Designating one or more individuals responsible for implementation.

- 2 My organization has identified key individuals in the implementation process.
- 3 My organization has assigned implementation duties and responsibilities to appropriate individuals.

2c. Implementing reporting/decision mechanism and maintain records.

- 1 My organization is developing tools and procedures for tracking ICT accessibility issues.
- 2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
- 3 My organization uses reports to make organizational changes to improve ICT accessibility.

Section 2 Comments (Provide any comments or additional information on this section here.)

3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

Manufacturers: Address processes that pertain to your development of ICT products.

Service providers: Address processes that pertain to your development of ICT services.

Integrators: Address processes that pertain to your ICT integration services and solutions.

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

0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)

3a. Identifying candidate processes for criteria integration.

- 1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
- 2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
- 3 My organization has approved plans to integrate accessibility criteria into these processes.

3b. Implementing process changes.

- 1 My organization has begun modifying its key business processes to integrate accessibility criteria.
- 2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
- 3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

3c. Integrate fully into all key processes.

- 2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings.
- 3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

Section 3 Comments (Provide any comments or additional information on this section here.)

4. Provide processes for addressing inaccessible ICT.

Manufacturers: Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d.

Service providers: Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d.

Integrators: Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d.

Catalogue Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings in 4e.

0 We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of

4a. Creating plans that include dates for compliance of inaccessible ICT.

- 1 We are developing plans to identify and test ICT developed and sold by our organization.
- 2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance.
- 3 We perform accessibility testing on all products / serviced developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.

4b. Providing alternate means of access until the ICT is accessible.

- 0 We do not have plans for providing alternate means of access for our organization's ICT offerings.
- 1 We are developing plans for providing alternate means of access for our organization's ICT offerings.
- 2 We are implementing methods providing alternate means of access for our organization's ICT offerings.
- 3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.

4c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects

- 1 We are developing a corrective actions process for handling accessibility technical issues and defects
- 2 We are implementing a corrective actions process for handling accessibility technical issues and defects

3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.

4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking.

1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.

1 We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.

2 We have a record keeping system for tracking the accessibility status of current and future products / services.

2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.

3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.

3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.

4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Catalogue Vendor/Reseller only)

1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.

2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.

3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

0 We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)

5a. Defining skills/job descriptions.

1 We have defined general skills and knowledge needs for ICT accessibility.

2 We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)

3 We have mapped key accessibility skills and knowledge needs to specific fields of practice.

5b. Identifying existing resources that match up and address gaps.

2 We have performed a gap analysis correlating accessibility skills and knowledge and current resources.

3 We have organized the gaps in order of priority.

5c. Managing progress in acquiring skills and allocating qualified resources.

1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.

1 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.

2 We have developed a process to track resource training and augmentation.

3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place.

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

0 We do not have a plan to make our accessibility policy or other accessibility information publicly available. (If selected, skip to next section or provide comments at the end of this section.)

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
- 1 Our accessibility policy and documentation (VPATs, etc.) for some products is publicly available or available upon request.
- 2 Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATs

- 2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
- 3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce

6c. ICT Accessibility policy and documentation availability

- 2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
- 3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Section 6 Comments (Provide any comments or additional information on this section here.)

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

1. What is PDAA?

Policy-driven Adoption for Accessibility (PDAA) is a tool that Vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles: towards the creation of accessible offerings over the long term.

- Enabling products for accessibility requires integrating accessibility criteria into all phases of a product life cycle, and other business processes where accessibility plays a role.
- Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards. Gaps in Vendor internal governance systems and leadership commitment inhibit their ability to meet these standards. continue to improve them over time.

2. Why are buying organizations requesting information on company accessibility policy?

Making an organization's information and communications technology (ICT) offerings accessible to people with disabilities requires commitment in many areas of that organization. PDAA data helps buying organizations understand a Vendor's accessibility policy, A mature accessibility policy implementation signals that the vendor is truly aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the Vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning consistently results in a friendlier product for all users, including those with disabilities.

3. Why is PDAA information important to the buying organization?

The requested information provides insight into Vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings, which can increase the procuring organizations' confidence in the accuracy of Vendor's accessibility documentation. Current ICT accessibility reporting formats such as VPATs (Voluntary Product Assessment Templates) only apply to COTS products and services. In many cases, Vendor VPATs lack credibility due to limited knowledge about their offerings' accessibility. Additionally, there is no standard reporting format for non-COTS offerings such as development services for websites, web applications, system

4. How will this information be used?

The initial completed form will establish a baseline for where a vendor stands with regard to its ICT accessibility policy. The baseline illustrates the depth and maturity of the Vendor's support for accessibility policy and practices as illustrated via the PDAA Maturity (<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx>)

The questionnaire may also be included in future solicitations so that progress can be assessed. The Vendor responses from the questionnaire may be considered as an element in Vendor selection; however, this would be determined by the procuring. Additionally, Vendor organizations can use the results as a roadmap for implementing their organization-wide ICT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible

5. We already submit VPATs as part of solicitation responses. Is that adequate?

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. The expectation is that organizations with mature approaches to PDAA will greatly improve the levels of accessibility in products. It should also result in well documented, accurate VPATs, improving their value in product-level

6. What is the PDAA Maturity Model?

Based on the Capability Maturity Model (CMM) concept, the PDAA Maturity Model (Link on next line) provides buying organizations and vendors with a simple dashboard or matrix to track and demonstrate Vendors' progress toward full system-wide support of (<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx>)

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

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

Or contact the Statewide EIR Accessibility Coordinator via Email at:

statewideaccessibilitycoordinator@dir.texas.gov

For government organizations/agencies

8. What is PDAA?

Policy-driven Adoption for Accessibility (PDAA) is a tool that Vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles: towards the creation of accessible offerings over the long term.

- Enabling products for accessibility requires the integration of accessibility criteria in all phases of a product life cycle, and other
- Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards, but gaps in internal governance and commitment by industry inhibits the adoption and implementation of these standards.
- Agency procurement organizations need assurances that vendors have the ability to produce accessible offerings and continue

9. Does the PDAA replace VPATs?

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. VPATs are still a valuable tool at the product level, and the expectation is that vendors with mature

10. Why a "maturity model" of evaluation?

Successfully enabling an organization for ICT accessibility requires implementation within various areas of an organization. As with any organization-wide initiative, implementation cannot occur all at once. The PDAA Maturity Model is used to gauge progress (<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx>)

11. Why should we support vendors who have mature PDAA practices?

A mature accessibility policy implementation signals that the vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning

12. How should we score PDAA information?

In general, the PDAA questionnaire is meant to ensure that the same information is collected from all bidders, and how the agency uses that information will depend on circumstances. offerings or Vendors by the procuring organization.

PDAA evaluation is an area that will need some practical experience, and we hope that organizations will share what they learn.

13. Where does the PDAA information fit within the procurement process?

Using consistent information in evaluating bids is a key element of open and competitive public procurements. The information given in a PDAA report can help judge the ability of a Vendor to: complete a VPAT correctly, produce accessible custom ICT offerings (web sites, web applications, software, etc.), resolve accessibility defects when discovered, and otherwise be a partner in helping you meet your compliance obligations. The specific role of PDAA responses may be determined in part by the procurement laws,

14. What happens if the vendor claims the information is confidential or a trade secret?

Vendors often claim this for information required in procurements. Your organization's procurement laws, policies, or practices may already address how you handle such claims.

15. What other states are using the PDAA model?

The PDAA model is in its early stages. A coalition of states are working with several national associations to harmonize the criteria for this model, and for obtaining and evaluating PDAA information. The goal is for more states and other government entities to

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

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

Or contact the Statewide EIR Accessibility Coordinator at:

statewideaccessibilitycoordinator@dir.texas.gov

EXAMPLE



Vendor ICT Accessibility Policy Assessment

This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations.

Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the workbooks. This assessment is not a substitute for other requested accessibility information such as VPATS.

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

Organization information

Organization name: Company X
Organization address: 1111 State Blvd. Anytown, TX 78701
Responder contact information: myemailaddress@yahoo.com
Date of assessment completion: 1/1/15

My organization is a (choose one or more if applicable)

- ☒ **Manufacturer:** My organization develops and sells its own ICT products / services
☐ **Service Provider:** My organization sells IT development services
☐ **Integrator:** My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
☐ **Reseller or Catalogue Supplier:** Does not develop or have its own products, but offers COTS 3rd party products

For each criteria statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each group.

Responses

1. Develop, implement, and maintain an ICT accessibility policy.

0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)

2 1a. Having an ICT accessibility policy.

- 1 My organization is developing an ICT accessibility policy.
2 My organization is finalizing an ICT accessibility policy.
3 My organization has approved an ICT accessibility policy.

1 1b. Having appropriate plans in place to implement and maintain the policy.

- 1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
2 My organization has completed planning for initial implementation and maintenance of our accessibility policy.
3 My organization has approved plans for accessibility policy implementation and maintenance.

1 1c. Establishing metrics and tracking progress towards achieving compliance to the policy.

- 1 My organization is identifying metrics that can be used to gauge policy compliance.
2 My organization is collecting metrics and has begun designing progress reporting based on them.
3 My organization is tracking progress on policy adoption and continues to refine the metrics.

Section 1 Comments (Provide any comments or additional information on this section here.)

2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.

0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)

1 2a. Developing an organization wide governance system.

- 1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
2 My organization is finalizing plans that will result in an organization wide governance system.
3 My organization has approved plans for an organization wide governance system.

2 2b. Designating one or more individuals responsible for implementation.

- 2 My organization has identified key individuals in the implementation process.
3 My organization has assigned implementation duties and responsibilities to appropriate individuals.

1 2c. Implementing reporting/decision mechanism and maintain records.

- 1 My organization is developing tools and procedures for tracking ICT accessibility issues.
2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
3 My organization uses reports to make organizational changes to improve ICT accessibility.

Section 2 Comments (Provide any comments or additional information on this section here.)

3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

Manufacturers: Address processes that pertain to your development of ICT products.

Service providers: Address processes that pertain to your development of ICT services.

Integrators: Address processes that pertain to your ICT integration services and solutions.

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

0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)

1 3a. Identifying candidate processes for criteria integration.

- 1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
3 My organization has approved plans to integrate accessibility criteria into these processes.

1 3b. Implementing process changes.

- 1 My organization has begun modifying its key business processes to integrate accessibility criteria.
2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

3c. Integrate fully into all key processes.

**Request for Offer
Motorola Branded Products and Related Services
DIR-TSO-TMP-426
Bid Package 6**

**VPAT™
Voluntary Product Accessibility Template®**

Version 1.3

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

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

Date:

Name of Product:

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

Summary Table

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<i>Criteria</i>	Supporting Features	Remarks and explanations
Section 1194.21 Software Applications and Operating Systems		
Section 1194.22 Web-based Internet Information and Applications		
Section 1194.23 Telecommunications Products		
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Section 1194.21 Software Applications and Operating Systems – Detail

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

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

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

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Section 1194.22 Web-based Internet information and applications – Detail

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

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

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

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

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Section 1194.23 Telecommunications

Products – Detail

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

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

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

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Section 1194.24 Video and Multi-media

Products – Detail

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

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

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Section 1194.25 Self-Contained, Closed Products – Detail

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

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

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

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

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Section 1194.26 Desktop and Portable Computers – Detail

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

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Section 1194.31 Functional Performance

Criteria – Detail

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

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

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Section 1194.41 Information, Documentation and Support – Detail

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Voluntary Product Accessibility Template®

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

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

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Bid Package 7

Department of Information Resources

Motorola Branded Products and Related Services

Request for Offer DIR-TSO-TMP-426

Vendor References

VENDOR REFERENCES
Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426
REFERENCE DEADLINE TO DIR: No later than 01/09/2018 02:00 PM

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: MotorolaRFO@dir.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name _____
Insert Type of (e.g. Hardware) Product/Services Category _____
Prime Contractor _____
Subcontractor(s) _____
Dates of Performance: Starting Date _____ Ending Date _____
Total Est. Contract Dollar Amount _____

This portion to be completed by the Customer providing reference and returned to DIR at MotorolaRFO@dir.texas.gov.

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

Please provide your opinion by rating the following:

Quality of Motorola Branded Products and Related Services Products and Related Services

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

Cost

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

Timeliness of Performance

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

Business Relations & Customer Satisfaction

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

Comments: (Please use additional page if necessary)

In your opinion, should this Vendor be used again for Motorola branded products and related services?
Yes ___ No ___

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

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

Vendor Reference Evaluation Scoring

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

DIR-TSO-TMP-426
Bid Package 8

MASTER OPERATING LEASE AGREEMENT

- 1. Definitions.** Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.
- (a) “Assets” refers to the Products as allowed within the Contract, including the Hardware, Software, and related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).
 - (b) “Contract” refers to DIR Contract number DIR-TSO-XXXX into which this Appendix is incorporated.
 - (c) “Event of Default” is defined in Section 23, “Default.”
 - (d) “Event of Loss” means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.
 - (e) “Hardware” refers to the computer machinery and equipment specifically identified on the applicable Schedule.
 - (f) “Lease” means the financing transaction described in this MOLA.
 - (g) “Lessee” means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.
 - (h) “Lessor” means the Vendor identified in the Contract.
 - (i) “MOLA” means this Master Operating Lease Agreement (Appendix E). Any reference to “MOLA” includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.
 - (j) “Rent Payment” means the amount payable by Lessee for the Assets as specified in the applicable Schedule.
 - (k) “Schedule” or “Supplementary Schedule” to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee,

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

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

2. Lease.

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

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

3. Term of MOLA.

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

4. Term of Schedule.

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

5. Administration of MOLA.

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

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

6. Rent Payments.

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

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

7. Liens.

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

8. Appropriation of Funds.

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

9. Assignment of Warranties.

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

10. Inspection and Acceptance.

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

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

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

12. Relocation of Hardware and Software.

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

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

13. Taxes.

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

14. Ownership.

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

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

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

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

16. Quiet Enjoyment.

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

17. Warranties regarding the Assets.

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

18. No Warranties by Lessor regarding the Assets.

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

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

19. Risk of Loss.

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

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

20. Representations and Warranties of Lessee.

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

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

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

21. Representation and Warranties of DIR.

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

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

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

22. Representations and Warranties of Lessor.

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

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

23. Default.

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

24. Remedies.

(a) Lessor's Remedies.

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

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

- II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and
 - III. interest on (I) from the date of default at 1½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (II) from the date Lessor incurs such fees, costs or expenses.
- ii. Upon return or repossession of the Hardware, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Hardware, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Hardware, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Hardware shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Hardware shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Hardware, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
 - iii. No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default by Lessee shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
 - iv. Neither DIR nor non-defaulting Lessees shall be deemed in default under the MOLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

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

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

25. Notices and Waivers.

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

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

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

27. Delivery of Related Documents.

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

28. Miscellaneous.

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

Attachment 1 to the Master Operating Lease Agreement Financial Disclosure Summary

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

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

DIR-TSO-TMP-426
Bid Package 9

MASTER LEASE AGREEMENT

1. Scope.

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

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

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

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

2. Term of MLA.

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

3. Term of Schedule.

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

4. Administration of MLA.

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

5. Rent Payments.

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

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

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

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

6. Liens and Taxes.

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

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

7. Appropriation of Funds.

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

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

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

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

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

8. Selection of Equipment.

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

9. Inspection and Acceptance.

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

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

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

11. Relocation of Equipment.

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

12. Ownership.

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

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

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

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

14. Quiet Enjoyment.

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

15. Warranties.

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

16. No Warranties.

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

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

17. Indemnification.

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

18. Risk of Loss.

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

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

19. Insurance.

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

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

20. Representations and Warranties of Lessee.

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

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

21. Representation and Warranties of DIR.

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

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

22. Representations and Warranties of Lessor.

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

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

23. Default.

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

24. Remedies.

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

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

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

25. Notices and Waivers.

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

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

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

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and DIR and each Lessee leasing Equipment under the MLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MLA. Each Lessee leasing Equipment through Schedules under this MLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Each Lessee leasing Equipment through Schedules under this MLA and DIR acknowledge that the assigns do not assume Lessor's obligations hereunder and agree to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which DIR or the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) **LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE'S CONSENT. LESSEES THAT ARE STATE AGENCIES, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AGREE THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR'S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER.** Without the prior written consent of Lessor,

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

27. Delivery of Related Documents.

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

28. Lessee's Waivers.

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

29. Security Interest and UCC Filings.

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

30. Miscellaneous.

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

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

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

- (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither it , nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- (v) during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision making authority,
- (vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;
- (vii) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;
- (viii) Lessor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (ix) as of the effective date of the MLA, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (x) to the extent applicable to this scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xi) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (xii) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All

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

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

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

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

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

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

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

(k) 31. Amendments.

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



Department of Information Resources
Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426

Addendum #1

This addendum to Request for Offer (RFO) DIR-TSO-TMP-426 contains:

1. Written questions and official answers
 2. Modifications to RFO
 3. Vendor Conference presentation slides
 4. Vendor Conference webinar sign-in sheet
-

1. **WRITTEN QUESTIONS AND OFFICIAL ANSWERS**

- 1) **Question:** Bid Package 2: Pricing Sheet- Are we allowed to submit categories/sub-categories/product codes using assigned discount levels to each product code versus the over 10,000 pricing entries needed for each individual Motorola part and model/part number? There is not enough time to enter that many parts when a catalog is available and product codes can be referenced with each part number.

Answer: As stated in Section 3.1.1 of RFO (Bid Package 1), Vendors are highly encouraged to propose the pricing by Product Category. Vendors must offer only one discount for each product category proposed. The discount for each product category will be applied to all products within that product category. Vendor may upload an additional itemized spreadsheet with more detail if needed; however, pricing will be evaluated as submitted in the Automated Pricing Form in BidStamp.

- 2) **Question:** In regard to the pricing section, would DIR expect an attachment that references product codes and their associated discounts versus an excel list of all products?

Answer: Please see the answer for Question #1. Vendors must submit pricing on DIR's Automated Pricing Form in the BidStamp VIS. In addition, Vendor may upload the itemized MSRP price list in BidStamp VIS as supplemental document.

- 3) **Question:** Should it be 2 minorities or women's trade organization other than 1?

Answer: In accordance with Method B (Attachment B) of HUB Subcontracting Plan Form, Section B-3 (c) & (d), it should be two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs.

- 4) **Question:** If we were able to find a HUB as an order fulfiller would the product that they processed count toward the HUB goal or does only subcontracting count toward the goal?

Answer: Any HUB certified subcontractor, including Order Fulfillers, utilized by a prime contract holder will count toward the HUB goal.

- 5) **Question:** We are requesting a 2-week extension due to the extension pricing entries needed for the pricing section.

Answer: The due date for RFO response and vendor reference is changed to January 16, 2018.



Department of Information Resources
Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426

Addendum #1

2. MODIFICATIONS TO RFO

(a) New Section 1.2.8 E-Rate, is added to Bid Package 1, as follows:

1.2.8 E-Rate

The Motorola Branded Product and Related Services RFO DIR-TSO-TMP-426 may result in the award of contracts for E-Rate qualified products and services. The E-Rate program provides discounts to public K-12 schools, and libraries purchasing telecommunications services, Internet access, Internet connections, and basic maintenance of internal connections. Eligible entities include K-12 public schools, school districts, charter schools, and libraries. DIR simplifies the procurement process for products and services that qualify for E-Rate funding by filing the Form 470 with the Universal Service Administrative Co. (USAC) on select RFOs where the possibility of E-Rate contracts is anticipated. Contracts awarded under selected RFOs are considered E-Rate eligible. Eligible contracts on the DIR website are designated by the following green E-Rate symbol on the contract detail page.

(b) Bid Package 1, Section 4.3.1 RFO Schedule, is revised, as follows:

Date/Time	Activity
11/14/2017	Publish RFO on Electronic State Business Daily
11/30/2017 10:00 AM (CT)	Optional Vendor Conference
12/04/2017 04:00 PM (CT)	Deadline for submitting questions
12/11/2017 04:00 PM (CT)	Estimated Date for posting answers to questions on the ESBD
01/09/2018 02:00 PM (CT) 01/16/2018 02:00 PM (CT)	Deadline for DIR to receive Vendor references
01/09/2018 02:00 PM (CT) 01/16/2018 02:00 PM (CT)	Deadline for submitting responses to RFO
1/17/2018 – until completed	Evaluation of responses, oral presentations (if requested), negotiation and contract execution



Department of Information Resources
Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426

Addendum #1

3. **VENDOR CONFERENCE PRESENTATION SLIDES**

Please see next page.

4. **VENDOR CONFERENCE/WEBINAR SIGN-IN SHEET**

Please see last page.

Motorola Branded Products & Related Services Request for Offer DIR-TSO-TMP-426

Vendor Pre-Bid Conference

November 30, 2017

10:00 AM (Central Time)



Texas Department of Information Resources

Introduction

Sandy Fang
Contract Manager Chief Procurement Office

Stephanie Harrison
Contract Manager Chief Procurement Office

Mary Vickery, DIR
Contract Manager Chief Procurement Office

Delia Arellano
Contract Manager Chief Procurement Office

Joan Scott
Assistant Director, Cooperative Contracts Chief Procurement Office

Beth Perry, DIR
Manager IT Application Development

Agenda

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

General Information

- Webinar participants may submit questions at anytime during the webinar by using the question tab, or through the BidStamp Vendor Information System Portal (VIS) by 4:00 P.M. (CT), December 4, 2017.
- Reference the RFO page number and Section number when submitting questions.
- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Official “Questions and Answers” will be posted as an Addendum on the [Electronic State Business Daily \(ESBD\)](#)

General Information (continued)

- **Disqualification of Offers**

- Failure to sign Vendor Information Form (Exhibit A)
- Failure to complete Financial Information (DUNS Number)
- Failure to complete a Historically Underutilized Business (HUB) Subcontracting Plan (HSP)
- Failure to submit the “Mandatory Response Contents” for the RFO
- Late submission of response
- Contact with DIR employees regarding this RFO other than designated contacts



- **Delivery of Offers**

- Any Vendor responding to this RFO must submit its response through the BidStamp VIS.

General Information (continued)

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

General Information (continued)

Point of Contact for inquiries regarding this RFO:

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

Contacts for the following related topics:

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

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

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

DIR Cooperative Contracts

- DIR combines the buying power of DIR Customers to obtain volume-discounted pricing for IT products and services, and establishes the master contracts for use by DIR customers (State of Texas government entities, universities, counties, cities, school districts, K-12, out-of-state customers, etc.).
- Customer purchases through the Cooperative Contracts Program resulted approximately \$6 billion for fiscal years FY2015 – FY2017. See Bid Package 1, Section 1.2.5, Historical Sales.
- DIR currently does not have a Motorola Branded contract but sales on various other contracts carrying Motorola products has resulted in over \$49 million.

Bid Submittal

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

Bid Submittal

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

Responding to a Solicitation

- After Vendor account is enabled, Vendor will submit and manage RFO response(s) from the BidStamp VIS portal.
- The Vendor BidStamp Guide and the presentation are posted on DIR's website on the Information For Vendors page.
<http://dir.texas.gov/View-Information-For-Vendors/Landing.aspx>

Creating a New Response



To create a new response:

1. Access BidStamp VIS Portal: <http://dircommunity.force.com/BidStamp>
2. Log in to the VIS portal then select the “Open Solicitations” tile
3. Click on the “RFO Number” (DIR-TSO-TMP-426) of the solicitation you want to respond to
4. You will be navigated to the “RFO Number Detail” page



Texas Department of Information Resources Vendor IS Community

My Account
View and update your information

Open Solicitations
Search for open solicitations

My Responses
View your solicitation responses

Vendor Information
View information for vendors

About DIR
View information about DIR


Contact DIR
Get contact information for DIR

All Open Solicitations

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

Creating a New Response, cont.

“RFO Number Detail” page will display important deadlines for the solicitation and list any questions Vendor has submitted.



Texas Department of Information Resources

[My Account](#) [Solicitations](#) [Responses](#) [Log out](#)

RFO Number
DIR-TSO-TMP-473

RFO Number Detail

Respond To Solicitation

Ask A Question

Subscribe to Solicitation

View Solicitation Documents

Actual Start Date Posting

5/15/2017

Question Submission Deadline Date

5/31/2017 2:00 PM

Date/Time Responses Due

6/15/2018 2:00 PM

Vendor Conference Date

5/25/2017 2:00 PM

RFO Answers to Questions Deadline Date

6/7/2017 5:00 PM

Actual Start Date Evaluation

6/16/2017

New Fields

Solicitation Status

Posted

Type

Cooperative

RFO Questions

No records to display

See Descriptions of Buttons on next slide

Creating a New Response, cont.

Detailed Descriptions of Buttons:

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

Respond to a Solicitation



My Account

Solicitations

Responses

Log out

RFO Response
R0006029

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

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

RFO Response Detail				Delete Submit Ask A Question Create Pricing Form			
RFO Number	DIR-TSO-TMP-473	Actual Start Date	Posting Date	Status	In Progress	Vendor	Tech Widgets-R-US
Submission Date		5/25/2017 2:00 PM	5/31/2017 2:00 PM	Question Submission Deadline Date	5/15/2017		
Submitted By		6/7/2017 5:00 PM	6/15/2018 2:00 PM	Date/Time Responses Due			
Vendor Conference Date		6/16/2017					
RFO Answers to Questions Deadline Date							
Actual Start Date Evaluation							

RFO Response Documents
No records to display

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

Vendor References
No records to display

"RFO Response Page" buttons:

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

RFO Overview



Request for Offer DIR-TSO-TMP-426

Motorola Branded Products and Related Services

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

RFO Contents

Bid Package 1 – RFO DIR-TSO-426

Exhibit A – Vendor Information

Exhibit B – Vendor History and Experience

Exhibit C - Contract Marketing and Support Plan

Exhibit D – HUB Subcontracting Plan

Bid Package 2 – Sample Pricing Sheet

Bid Package 3 – Sample Contract for Products and Services

Bid Package 4 – Standard Terms and Conditions for Products and Related Services Contracts

Bid Package 5 – Vendor ICT Accessibility Policy Assessment (PDAA)

Bid Package 6 – VPAT

Bid Package 7 – Vendor References

Bid Package 8 – Master Operating Lease Agreement (MOLA)

Bid Package 9 – Maser Lease Agreement (MLA)

Bid Package 1 - RFO Scope

Bid Package 1 – RFO, Section 3. Scope

- **Motorola Branded Products**

All Motorola Branded Products include, but not limited to, Hardware, Software, peripherals, accessories manufactured or licensed under the Motorola brand name.

- **Third Party Products**

Third party products may be proposed as an option and will be awarded at the discretion of DIR.

Third Party Products are those hardware, peripherals, accessories and software by other manufacturers or publishers that may be used as an attachment or embedded within an Motorola device to create, enhance or extend the functionality of the Motorola branded device

Bid Package 1 - RFO Scope

Reseller Requirements:

- Any reseller responding to this solicitation must have a signed letter of authorization from the manufacturer
- The authorization letter must be submitted with the response and must be uploaded in the BidStamp Vendor Information System (VIS)

Bid Package 1 - RFO Scope

RFO Section 3.2. Related Services

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

Bid Package 1 - Term of Contract

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

The contract will **renew automatically in one-year increments for three (3) additional years** under the same Terms and Conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

Bid Package 1 - RFO Schedule

- Section 4.3.1 RFO Schedule:

Date/Time	Activity
11/14/2017	Publish RFO on Electronic State Business Daily
11/30/2017 10:00 AM (CT)	Optional Vendor Conference (Webinar)
12/04/2017 04:00 PM (CT)	Deadline for submitting questions
12/11/2017 04:00 PM (CT)	Deadline for posting answers to questions on the ESBID
01/09/2018 02:00 PM (CT)	Deadline for DIR to receive Vendor references
01/09/2018 02:00 PM (CT)	Deadline for submitting Responses to RFO
01/10/2018 - until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

Bid Package 1 – Exhibits

Exhibit A, Vendor Information

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

Exhibit B, Vendor History and Experience

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

Exhibit C, Contract Marketing and Support Plan

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

Bid Package 1 – Exhibits

Exhibit D – HUB Subcontracting Plan (HSP)



The HSP form is automated and must be submitted in BidStamp VIS

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

Bid Package 1, Exhibit D – HUB Subcontracting Plan

HUB Goal for this RFO is 21.1%

If subcontracting, Vendor should complete all sections as well as:

- Method A (Attachment A) - If your company is meeting or exceeding the HUB Goal of 21.1% for this RFO
- OR
- Method B (Attachment B) - If your company is not going to meet the HUB Goal of 21.1% for this RFO



Bid Package 1, Exhibit D – HUB Subcontracting Plan

- Provide written notification of subcontracting opportunity listed to at least three State of Texas HUBs
- Provide written notification of subcontracting opportunity to a minority or women's trade organization or development center
- Allow no less than seven (7) working days for HUBs to respond (keep delivery receipt emails)
- Include all VID numbers for each vendor, all estimated dollar amounts and percentages for each vendor

Bid Package 1, Exhibit D – HUB Subcontracting Plan



If not subcontracting,

- your response must contain a detailed explanation demonstrating HOW your company will fulfill the entire contract with its own resources
- Self-Performance Justification must be provided in the space provided in SECTION 3, do not reference sections in the RFO

Bid Package 1, Exhibit D – HUB Subcontracting Plan

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

Lynn Sanchez
512-463-9813

Email: lynn.sanchez@dir.texas.gov

or

dir.hub@dir.texas.gov

Pricing Sheet

- Vendors must submit pricing on DIR's Automated [Pricing Form](#) in the BidStamp VIS.
- Vendors will need to propose the following for Motorola branded:
 - Product Category and/or Subcategory
 - Product Description
 - Related Service Description
 - MSRP (for Related Services)
 - DIR Customer Discount % off MSRP
- Vendors will need to propose the following for Third-party Products (if any):
 - Brand
 - Product Description
 - DIR Customer Discount % off MSRP

Pricing Sheet

- Vendors must offer only one discount for each Product Category or Product Subcategory proposed
- The price to the DIR Customer will include shipping/handling fees and DIR Administrative Fee

Pricing Sheet

Volume Discounts

- DIR encourages Vendors to offer VOLUME pricing or discount for specific Products and/or Services.
- Aggregate Sales: If Vendor is proposing increased discounts based on total statewide aggregate contract sales, Vendor must list total contract dollar amount threshold, specific product and/or service or ALL, and discount percentage increase.
- Vendors offering Volume Discounts should use the Bid Package 2 excel spreadsheet format for all volume discounts.
- Vendors will need save the EXCEL spreadsheet as a PDF and enter it into Bid Stamp.

Threshold and SOW Requirements

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

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

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

Electronic and Information Resources (EIR) Accessibility Forms



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

This RFO include 2 accessibility related forms:

1. [Voluntary Product Accessibility Templates \(VPAT\)](#) – Bid Package 6
 - If response includes Commercial Off the Shelf (COTS) offerings
2. [Vendor Accessibility Policy Assessment](#) Form – Bid Package 5
 - Required for all vendors responding to this RFO

Voluntary Product Accessibility Templates (VPAT) – Bid Package 6

VPATs are

- Formal statements for commercial off the shelf (COTS) products and services documenting accessibility compliance to US Section 508 technical standards
 - utilize ITIC VPAT template form.
 - manufacturer-generated and product / product family specific
- Completed by individuals with relevant knowledge of the product accessibility.
- Based on accessibility testing results and supported by documentation (on request).
- Accurate; inaccurate claims of compliance could generate end user complaints under the Americans with Disabilities Act.

Voluntary Product Accessibility Templates (VPAT) – Bid Package 6

Vendors should complete this form if response includes one or more of the following offering types:

- Website development services
- Web Application Development Services
- Custom development services as part of an integrated solution.
- Client based software application development services
- Other software development services containing one or more user interfaces (end user, admin, etc.)

Vendor Accessibility Policy Assessment Form – Bid Package 5



Why is DIR requesting information on vendor accessibility policy?

- Texas agencies and institutions of higher education are required to procure or develop accessible offerings. Gaps in vendor internal governance systems and leadership commitment inhibit the ability to meet these standards for their products / services.
- Accessibility policy maturity provides insight into vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings
 - Results mapped to the Policy Driven Adoption for Accessibility (PDAA) Maturity Model
- Vendors can use the results as a roadmap for implementing their organization-wide IT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.

Note: Form (Excel file) should be completed in its original format and uploaded in BidStamp VIS

Additional Information regarding EIR Accessibility and VPAT Forms



- **EIR Accessibility Website**
<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=36>
- **PDAA Maturity Model**
<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx>
- **Additional Information**
<http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement>

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

Email: jeff.kline@dir.texas.gov

Bid Package 7 – Vendor References



VENDOR REFERENCES

Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426

REFERENCE DEADLINE TO DIR: No later than 01/09/2018 02:00 PM

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: MotorolaRFO@dir.texas.gov

This portion to be completed by the Vendor requesting reference information

Vendor Name _____

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

Prime Contractor _____

Subcontractor(s) _____

Dates of Performance: Starting Date _____

Ending Date _____

Total Est. Contract Dollar Amount _____

Mandatory Submissions

RFO Section 4.7.2 – Mandatory Response Contents

RESPONDENT MUST SUBMIT THE ITEMS LISTED BELOW IN BIDSTAMP VIS OR THE RESPONSE WILL BE REJECTED

- Exhibit A – Vendor Information (**SIGNED**)
- Exhibit A – **Canceled Contracts** – Attachments 1 and 2 (if applicable)
- Exhibit B – Vendor History and Experience
- Exhibit C – Contract Marketing and Support Plan
- Exhibit D – HUB Subcontracting Plan (**SIGNED**) & supporting documentations
- Pricing Sheet –Automated Pricing Form in BidStamp VIS
- Policy Driven Adoption Assessment (PDAA) – Bid Package 6
- Resell Authorization Letter
- Vendor’s service or licensing agreement, etc.(if any)

Evaluation Criteria

• RFO Section 5.1 – Evaluation of Responses

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

• RFO Section 5.2 – Evaluation Criteria

- Pricing – 45%
- Vendor History and Experience and Vendor References – 30%
- Vendor's Contract Marketing and Support Plan – 25%

Questions

- Break (10 minutes)
- Reference the Section Number and page number with your submitted question.

Reminder

- Questions answered today are unofficial until posted on the EBSD in the form of an Addendum.
- Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-411 on the Electronic State Business Daily, <http://www.txsmartbuy.com/sp>
- It is the responsibility of Vendors to monitor the EBSD web site for addenda.

Bid Package 1 - RFO Schedule

- Section 4.3.1 RFO Schedule:

Date/Time	Activity
11/14/2017	Publish RFO on Electronic State Business Daily
11/30/2017 10:00 AM (CT)	Optional Vendor Conference (Webinar)
12/04/2017 04:00 PM (CT)	Deadline for submitting questions
12/11/2017 04:00 PM (CT)	Deadline for posting answers to questions on the ESBID
01/09/2018 02:00 PM (CT)	Deadline for DIR to receive Vendor references
01/09/2018 02:00 PM (CT)	Deadline for submitting Responses to RFO
01/10/2018 - until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

Conference Closing

- All inquiries must be directed to Carrie Cooper

Carrie Cooper

Phone: 512-936-2353

Fax: 512-936-6896

Email: carrie.cooper@dir.texas.gov

- This presentation will be posted on the Addendum with Q&A.

Thank you for attending today's webinar!

Texas Department of Information Resources
Request for Offer: DIR-TSO-TMP-426
Vendor Conference Sign-in Sheet
November 30, 2017 / 10:00 A.M. (CT)

PLEASE PRINT LEGIBLY

REPRESENTATIVE	COMPANY NAME	E-MAIL ADDRESS	HUB STATUS
Roy Mata	Texas Government Solutions	RMata@TGSAustin.com	Yes
Webinar – George Ebelt	Motorola Solutions Inc.	george.ebelt@motorolasolutions.com	No
Webinar – Rick Russek	Motorola Solutions Inc.	rick.russek@motorolasolutions.com	No
Webinar – Melissa Thetford	Industrial Communications	mthetford@indcom.net	Yes



Department of Information Resources
Motorola Branded Products and Related Services
Request for Offer DIR-TSO-TMP-426

Addendum #3

This addendum to Request for Offer (RFO) DIR-TSO-TMP-426 contains:

1. Extension of RFO Submission Deadline to January 23, 2018 2:00pm (CT)

Section 4.3.1 RFO Schedule, is amended as follows:

Date/Time	Activity
11/14/2017	Publish RFO on Electronic State Business Daily
11/30/2017 10:00 AM (CT)	Optional Vendor Conference
12/04/2017 04:00 PM (CT)	Deadline for submitting questions
12/11/2017 04:00 PM (CT)	Estimated Date for posting answers to questions on the ESBD
01/16/2018 02:00 PM (CT) 01/23/2018 02:00 PM (CT)	Deadline for DIR to receive Vendor references
01/16/2018 02:00 PM (CT) 01/23/2018 02:00 PM (CT)	Deadline for submitting responses to RFO
1/10/2018 – until completed 1/24/2018 – until completed	Evaluation of responses, oral presentations (if requested), negotiation and contract execution

End of Addendum #3

Amendment Number 1
to
Contract Number DIR-TSO-4101
between
State of Texas, acting by and through the Department of Information Resources
and
Motorola Solutions, Inc

This Amendment Number 1 to **Contract** Number **DIR-TSO-4101** ("**Contract**") is between the Department of Information Resources ("DIR") and Motorola Solutions, Inc ("**Contractor**"). DIR and Contractor agree to modify the terms and conditions of the **Contract** as follows:

1. **Appendix C, Pricing Index**, is hereby replaced in its entirety with **Appendix C, Pricing Index (per Amendment 1)**, as attached.

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

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

Motorola Solutions, Inc.

Authorized By: Signature on File

Name: Travis Boettcher

Title: Vice President

Date: 10/29/2018

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 11/4/2018

Office of General Counsel: MH 10/31/2018

**Amendment Number 2
to
Contract Number DIR-TSO-4101
between
State of Texas, acting by and through the Department of Information Resources
and
Motorola Solutions, Inc**

This Amendment Number 2 to Contract Number DIR-TSO-4101 ("Contract") is between the Department of Information Resources ("DIR") and Motorola Solutions, Inc ("Contractor"). DIR and Contractor agree to modify the terms and conditions of the Contract as follows:

1. **Appendix C, Pricing Index**, is hereby replaced in its entirety with **Appendix C, Pricing Index (per Amendment 2)**, as attached.

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

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

Motorola Solutions, Inc.

Authorized By: Signature on File

Name: Travis Boettcher

Title: Vice President

Date: 2/19/2019

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 2/20/2019

Office of General Counsel: MH 2/19/2019

**Amendment Number 3
to
Contract Number DIR-TSO-4101
between
State of Texas, acting by and through the Department of Information Resources
and
Motorola Solutions, Inc.**

This Amendment Number 3 to Contract Number DIR-TSO-4101 ("Contract") is between the Department of Information Resources ("DIR") and Motorola Solutions, Inc ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Appendix C, Pricing Index (Per Amendment 2)**, is hereby replaced in its entirety with **Appendix C, Pricing Index (per Amendment 3)**.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 3, Amendment Number 2, Amendment Number 1, and then the Contract.

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

Motorola Solutions, Inc.

Authorized By: Signature on File

Name: Neil Thomas

Title:Vice President, West Region

Date: 3/27/2020

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 3/31/2020

Office of General Counsel: DB, 3/30/2020

**Amendment Number 4
to
Contract Number DIR-TSO-4101
between
State of Texas, acting by and through the Department of Information Resources
and
Motorola Solutions, Inc.**

This Amendment Number **4** to **Contract** Number **DIR-TSO-4101** ("**Contract**") is between the Department of Information Resources ("DIR") and Motorola Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Appendix C, Pricing Index (Per Amendment 3)**, is hereby updated and replaced in its entirety with **Appendix C, Pricing Index (Per Amendment 4)**, as attached.

All other terms and conditions of the **Contract**, not expressly amended herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment 1 and then the Contract.

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

Motorola Solutions, Inc.

Authorized By: Signature on File

Name: Neil Thomas

Title: Vice President, West Region

Date: 4/7/2021

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 4/13/2021

Office of General Counsel: MH 4/12/21

Amendment Number 5
to
Contract Number DIR-TSO-4101
between
State of Texas, acting by and through the Department of Information
Resources
and
Motorola Solutions, Inc.

This Amendment Number 5 to Contract Number DIR-TSO-4101 ("**Contract**") is between the Department of Information Resources ("**DIR**") and Motorola Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

- 1. Contract, Section 1.C. Order of Precedence** is hereby amended and replaced in its entirety as follows:

C. Order of Precedence

For transactions under this Contract, the order of precedence shall be as follows:

- i. this Contract (DIR-TSO-4101), including all Amendments hereto in descending order;
- ii. Appendix A, Standard Terms and Conditions, dated December 2021;
- iii. Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan;
- iv. Appendix C, Pricing Index;
- v. Appendix D, Communications System Agreement;
- vi. Appendix E, Technical & Maintenance Service Terms and Conditions Agreement,
- vii. Appendix F, Subscription Services Agreement;
- viii. Appendix G, Software Products Addendum,
- ix. Appendix H, Mobile Video Addendum,
- x. Appendix I, Cyber Security Services Addendum;
- xi. Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-426, including all addenda; and
- xii. Exhibit 2, RFO DIR-TSO-TMP-426, including all addenda.

Each of the foregoing documents are incorporated by reference and together constitute the entire agreement between DIR and Vendor.

2. Contract, Section 2. Term of Contract is hereby amended as follows:

DIR and Vendor hereby agree to exercise the 90-day extension and then to extend the term of this Contract through July 22, 2024, or until terminated by either party pursuant to the termination clauses contained in this Contract.

3. Contract, Section 4. Pricing is hereby deleted and replaced in its entirety with the following:

4. Pricing

4.1 Pricing Index

Pricing to Customers shall be as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee (as defined below).

4.2 Customer Discount

- a) The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in Appendix C, Pricing Index. Successful Respondent shall not establish a List Price or MSRP for a particular solicitation. For purposes of this Section, "List Price" is the price for a product or service published in Successful Respondent's price catalog (or similar document) before any discounts or price allowances are applied. For purposes of this Section, "MSRP," or manufacturer's suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.
- b) Customers purchasing products or services under this Contract may negotiate additional discounts with Successful Respondent. Successful Respondent and Customer shall provide the details of such additional discounts to DIR upon request.
- c) If products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract, or (ii) to any other customer under the same terms and conditions provided for the State for the same products and services under this contract, then the price of such products and services under this Contract shall be adjusted to

that lower price. This requirement applies to products or services quoted by Successful Respondent for a quantity of one (1), but does not apply to volume or special pricing purchases. Successful Respondent shall notify DIR within ten (10) days of providing a lower price as described in this Section, and this Contract shall be amended within ten (10) days to reflect such lower price.

4.3 Changes to Prices

- a) Subject to the requirements of this section, Successful Respondent may change the price of any product or service upon changes to the List Price or MSRP, as applicable. Discount levels shall not be subject to such changes, and will remain consistent with the discount levels specified in this Contract.
- b) Successful Respondent may revise its pricing by publishing a revised pricing list, subject to review and approval by DIR. If DIR, in its sole discretion, finds that the price of a product or service has been increased unreasonably, DIR may request that Successful Respondent reduce the pricing for the product or service to the level published before such revision. Upon such request, Successful Respondent shall either reduce the pricing as requested, or shall remove the product or service from the pricing list for this Contract. Failure to do so will constitute an act of default by Successful Respondent.

4.4 Shipping and Handling

Prices to Customers shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees may be charged to Customers for standard shipping and handling. If a Customer requests expedited or special delivery, Customer will be responsible for any additional charges for expedited or special delivery.

4. Contract, Section 6. Notification is hereby amended as follows:

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

If sent to the State:

Hershel Becker or Successor of Office
Department of Information Resources

300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700

If sent to the Vendor:

Marty Saucedo
Motorola Solutions, Inc.
500 West Monroe Street
Chicago, Illinois 60661
Phone: (210) 237-2936
Email: marty.saucedo@motorolasolutions.com

- 5. Contract, Section 9. Internet Access to Contract and Pricing Information** is hereby inserted immediately after Section 8 as follows:

9. Internet Access to Contract and Pricing Information

In addition to the requirements listed in Appendix A, Section 7.2, Internet Access to Contract and Pricing Information, Successful Respondent shall include the following with its webpage:

1. A current price list or mechanism to obtain specific contract pricing;
2. MSRP/list price or DIR Customer price;
3. Discount percentage (%) off MSRP or List Price;
4. Warranty policies; and
5. Return policies.

- 6. Appendix A. Standard Terms and Conditions for Product and Related Services Contracts** dated 09/29/2017, is hereby replaced in its entirety with the attached **Appendix A. Standard Terms and Conditions** dated December 2021 (**per Amendment 5**), except where previous authorized exceptions to Appendix A were allowed and documented as part of the Contract, and all Amendments thereto. In such cases, the previously authorized exceptions shall be applied to the portions of the new Appendix A which are comparable to those in the earlier Appendix A for which they were written, and this without regard for the numbering or lettering associated with any of the documents. Applied in such manner, the exceptions shall remain in full force and effect until such time the Contract expires or is terminated.

7. In addition to the above-referenced authorized exceptions to Appendix A noted in Contract, Section 8, additional **Authorized Exceptions to Appendix A, Standard Terms and Conditions** dated December 2021 are as follows:

A. Section 4, General Provisions, Subsection 4.2, Modification of Contract Terms and/or Amendments, B., is hereby restated in its entirety as follows:

B. DIR may amend the Contract upon thirty (30) calendar days written notice to Successful Respondent: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.

B. **Section 4, General Provisions, Subsection 4.4, Assignment,** is hereby restated in its entirety as follows:

A. DIR may assign the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

B. Customer may assign a Purchase Order issued under the Contract without prior written approval to: i) a successor in interest (another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of a Purchase Order under the above terms shall require written notification by Customer. Any other assignment by a party shall require the written consent of the other party and a mutual written agreement.

C. Successful Respondent shall give DIR 90 days prior written notice before any assignment of its rights under the Contract or delegation of the performance of its duties under the Contract. If the Contract has not been amended to acknowledge the assignment by the end of this notice period, the Contract will be suspended until such amendment is executed.

C. Section 4, General Provisions, Subsection 4.5, Survival, is hereby restated in its entirety as follows:

All applicable Statements of Work that were entered into between Successful Respondent 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 Successful Respondent 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 (5) years. In all instances of termination or expiration and no later than five (5) days after termination or expiration or upon DIR request, Successful Respondent shall provide a list, in accordance with the format requested by DIR (i.e., Excel, Word, etc.), of all surviving Statements of Work and Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Statements of Work and Purchase Orders. Rights and obligations under the 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.

D. Section 10, Successful Respondent Responsibilities, Subsection 10.1.2 Infringements, is hereby restated in its entirety as follows:

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

STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- b. Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c. If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

E. Section 10, Successful Respondent Responsibilities, Subsection 10.8 Responsibility for Actions, B., is hereby restated in its entirety as follows:

- B. Successful Respondent, for itself and on behalf of its subcontractors, shall report to the DIR Contract Manager within fifteen (15) business days any change to the information contained in the Certification Statement of **Exhibit A** of the RFO or Section 10.4, Successful Respondent Certifications of this Appendix A to the Contract. Successful Respondent 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.

F. Section 10, Successful Respondent Responsibilities, Subsection 10.12, Limitation of Liability, is hereby restated in its entirety as follows:

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

8. Appendix C, Pricing Index, is hereby replaced in its entirety with **Appendix C, Pricing Index (per Amendment 5).**

9. Appendix D, Communications System Agreement, is hereby replaced in its entirety with **Appendix D, Communications System Agreement (per Amendment 5).**

10. Appendix G, Software Products Addendum, is hereby added.

11. Appendix H, Mobile Video Addendum, is hereby added.

12. Appendix I, Cyber Security Services Addendum, is hereby added.

All other terms and conditions of the Contract, not expressly amended herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 5, then Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment Number 2, and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 4/24/23.

Motorola Solutions, Inc.

Authorized By: Signature on File

Name: Scott Lees

Title: VP Government Sales - West

Date: 4/20/2023 | 9:49 AM CDT

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 4/24/2023 | 9:59 AM CDT

Office of General Counsel: J.G. | 9:59 AM CDT