

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES**

Visual Innovations 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 Visual Innovations Inc. (hereinafter "Vendor"), with its principal place of business at 8500 Shoal Creek Boulevard, Building One, Austin, Texas 78757.

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 Texas Building and Procurement Commission's Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-088, on November 27, 2006, for Classroom Interactive Products, Systems, and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-088 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

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; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-088, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-088, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to those products listed in Appendix C, Pricing. 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.

B. Services

Services available under this Contract are limited to those services listed in Appendix C, Pricing. 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

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP listed in Appendix C, Pricing.

C. Customer Price

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

$$\textit{Customer Price} = \textit{MSRP} - \textit{Customer Discount}$$

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 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 Contract shall be amended within ten (10) business days to reflect the lower price.

D. DIR Administrative Fee

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

E. Shipping and Handling Fees

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

F. Tax-Exempt

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

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. 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 Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

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. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

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 two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.00.
- B.** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. 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:

Sherry Parks, Service Delivery Division
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherry.parks@dir.state.tx.us

If sent to the Vendor:

Mayo DeLeon
Visual Innovations, Inc.
8500 Shoal Creek Blvd. Building One
Austin, Texas 78757
Phone: (512) 334-1100
Facsimile: (512) 334-1133
Email: mayo_deleon@vicav.com

7. Software License

A. 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.

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

A. All references in Appendix A to Catalog Information Systems Vendor (CISV) are hereby deleted.

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

Visual Innovations, Inc.

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

Authorized By: Signature on File _____

Authorized By: Signature on File _____

Name: Lloyd S. McCauley _____

Name: Cindy Reed

Title: Vice President _____

**Title: Deputy Executive Director
Operations & Statewide
Technology Sourcing**

Date: 9-24-07 _____

Date: 9-28-07 _____

Legal: CK 9-27-07 _____