

**Appendix A**  
**Standard Terms and Conditions For Information Technology Staff Augmentation Contracts**  
**(ITSAC)**

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**1. No Quantity Guarantees**

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

**2. Definitions**

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- i. A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- ii. A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- iii. Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- iv. A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- v. A local workforce development board created under Section 2308.253;
- vi. A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- vii. The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- viii. A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- ix. A nonprofit organization that provides affordable housing.

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

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

**D. 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.

**E. 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

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Purchase Order, or other authorized instrument).

- F. State** – refers to the State of Texas.
- G. DIR** – refers to the Department of Information Resources.
- H. Acceptable Candidate** – refers to a candidate that meets the stated requirements pursuant to a Work Order Solicitation and is correctly identified and priced using the ITSAC Category Pricing as defined in Exhibit B. – start here
- I. Acceptable Status** – refers to a status earned by a Vendor that will be used to determine in which tier a Vendor belongs.
- J. Active Vendor** – refers to Vendors that are given access to opportunities presented through Work Order Solicitations.
- K. Active Vendor Tier** – refers to one of two groupings of vendors with which DIR has ITSAC Contracts. Members of the Active Vendor Tier are provided access to opportunities presented through Work Order Solicitations
- L. Best Value Selection** – refers to Work Order Solicitation selections made by Customers that do not follow the competitive posting and review process. The Customer informs DIR of the intent to select a Worker and submits the appropriate procurement documentation required for the selection. Customer will determine the criteria for Best Value Selection and whether or not to use this procurement method.
- M. Compliance Check** – refers to the DIR staff activity of verifying the contents of reports and amounts of administrative fee payments made and submitted by Vendors pursuant to responsibilities under the Contract.
- N. Evaluation Period** – refers to the three calendar month period that coincides with the State fiscal calendar. The evaluation periods are September 1, to November 30: December 1 through February 28; March 1 to May 31 and June 1 through August 31st.
- O. Evaluation Status** – refers to the evaluation that is provided quarterly. It is one of two values: Acceptable or Unacceptable. Vendor shall be evaluated on its performance relative to the performance of other Vendors in the same grouping.
- P. Hourly Rate** – refers to the rate that is charged by the Vendor and paid by the Customer for services rendered by Worker(s) under this contract. It is calculated and communicated in terms of dollars per hour.
- Q. Interviewed Candidate** – refers to an Acceptable Candidate that was interviewed by the Customer pursuant to a Work Order Solicitation.
- R. Invoice** – refers to a Customer approved instrument submitted by Vendor for payment of services.
- S. ITSAC** – refers to the IT Staff Augmentation Contract document executed between DIR and Vendor.
- T. Non-response** – refers to the Vendor's failure to respond to a Work Order Solicitation in any three evaluation periods over a two year period (contiguous or not). Non-response may result in placement in the Suspended Tier.
- U. Not To Exceed (NTE)** – refers to the maximum hourly rate for which a Vendor has agreed to provide Worker(s). By this contract, Vendor can provide Worker(s) at a lower hourly rate, but not a higher hourly rate.
- V. Opportunity Response Time** – refers to the time within which a Vendor is expected to respond to a Work Order Solicitation with the appropriate resume(s). The metric used for expected opportunity response time is as established by the Customer.

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- W. Placed Candidate** – refers to an Interviewed Candidate that was selected by the Customer pursuant to a Work Order Solicitation.
- X. Purchase Order** – refers to 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).
- Y. Rate Schedule** – refers to the set of competitive, market driven, standardized rates that will document the NTE hourly rates for ITSAC Workers.
- Z. Suspended Vendor** – refers to Vendors who are not provided access to opportunities presented through Work Order Solicitations for a stated period of time.
- AA. Suspended Vendor Tier** – refers to one of two groupings of vendors with which DIR has ITSAC Contracts. Members of the Suspended Vendor Tier are not provided access to opportunities presented through Work Order Solicitations for a finite period of time.
- BB. TPASS** – refers to the Texas Procurement and Support Services Division of the Comptroller of Public Accounts (CPA).
- CC. Tiered Vendor Structure** – refers to the mechanism by which Vendors are placed into groups based on performance.
- DD. Unacceptable Status** – refers to a status earned by a Vendor that will be used to determine in which tier a Vendor belongs.
- EE. Vendor** – refers to awarded Information Technology Staff Augmentation Contract (ITSAC) Vendor.
- FF. Worker(s)** – refers to identified individual(s) who perform authorized services under the supervision of Vendor for DIR Customers and who are employees and/or subcontractors of the Vendor.
- GG. Work Order Solicitation** – refers to a document submitted to Vendor by DIR outlining the description of services to be performed for a specified DIR Customer. Work Order Solicitation will include: Number of Workers, Worker skills and qualifications required by the DIR Customer, the number of hours to be worked, duration of engagement with the DIR Customer, authorized travel, and other relevant information. The term also includes Best Value Selections made by Customers, in which the Customer defines Best Value Selection and informs DIR of the intent to select a Worker and submits the appropriate procurement documentation required for the selection.

**3. General Provisions**

**A. Entire Agreement**

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

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

1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.

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2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken 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.

**C. Invalid Term or Condition**

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

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

**D. Assignment**

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

**E. Survival**

All applicable service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor shall survive expiration or termination of the Contract.

**F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

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

**4. Contract Fulfillment and Promotion**

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

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

**B. DIR Logo**

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

**C. Vendor Logo**

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

**D. Trade Show Participation**

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

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**E. Performance Review Meetings**

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

**F. DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services.

**5. Purchase Orders, Invoices, and Payments**

**A. Purchase Orders**

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

**B. Invoices**

1) Invoices shall be submitted by the Vendor directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to the Vendor.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

**C. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. Payment under the Contract shall not foreclose the right to recover wrongful payments.

**6. Contract Administration**

**A. Contract Administrators**

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

**1) State Contract Administrator**

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic

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verification of pricing and monthly reports submitted by Vendor.

**2) Vendor Contract Administrator**

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

**B. Reporting and Administrative Fees**

**1) Reporting Responsibility**

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

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

c) DIR intends to implement an automated system to meet certain needs of the IT staff augmentation program. This may have a financial impact on the Vendor and may require additional reporting. In consideration of the award of this contract, Vendor is required to participate without a change in rates to customers.

**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 month period. Reports shall be submitted to the DIR Go DIRECT E-Mail Box at [itsac.reports@dir.state.tx.us](mailto:itsac.reports@dir.state.tx.us). Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract and submit one (1) monthly report. The monthly report shall include, per transaction: the Company name, Customer name, invoice date, invoice number, ITSAC Category, Title, Level, and Technology Type, Contractor Name, awarded hourly rate, quantity of hours, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, subtotals and totals, 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.

**3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor 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.

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

**4) DIR Administrative Fee**

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The administrative fee shall be specified in the Contract. Payment of the administrative fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on any remittance instruments.

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

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

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

**C. Records and Audit**

1) Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such

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3) Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to DIR staff and designees as needed. Vendor shall provide adequate office space to DIR staff during the performance of Compliance Check.

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

**D. Contract Administration Notification**

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

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 Go ITSAC E-Mail Box information.

**7. Vendor Responsibilities**

**A. Indemnification**

**1) INDEPENDENT CONTRACTOR**

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

This Contract creates an independent contractor relationship between DIR and Vendor and Vendor and each Customer hereunder. Under no circumstances shall the employees of Vendor be considered the employees, agents, partners, or officials of DIR or any of the Customers. Vendor shall be solely responsible for compensating its employees, for the withholding and payment of applicable taxes, and for

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purchasing any liability, disability, workers compensation or health insurance coverage deemed necessary by the Vendor.

**2) Acts or Omissions**

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 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 REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) 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,

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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. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. 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, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS 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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**C. Vendor Certifications**

Vendor certifies that it: (i) has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity,

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special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) is not currently delinquent in the payment of any franchise tax owed the State of Texas and is 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 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) 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 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) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration, and (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 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; (x) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xi) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and (xii) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

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

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

**E. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits

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of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

**F. Use of Subcontractors**

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

**G. Responsibility for Actions**

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.

**H. Confidentiality**

- 1) Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

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

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

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

Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the

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Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

**K. Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's 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 patent, trademark, or copyright infringement.

**L. 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 7.L.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

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 Subsection 7.L.

**M. Overcharges**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

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**N. Prohibited Conduct**

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

**O. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage as part of its response to RFO No. DIR-SDD-141. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, 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. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

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

**2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability 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.

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**3) Business Automobile Liability Insurance**

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

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

**P. Use of State Property**

Vendor is prohibited from using the Customer's equipment, the Customer's Location, or any other resources of the Customer or the State 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 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.

**Q. Immigration**

Vendor shall comply with the requirements of the Immigration Reform and Control Act of 1986 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 November 6, 1986, who will perform any labor or services under this Contract.

**8. Contract Enforcement**

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

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

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

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**B. Termination**

**1) Termination for Non-Appropriation**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated by the governing body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the services, they are obligated to pay for those services.

**2) Absolute Right**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* 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 9.A, Notices, of intent to terminate.

**3) Termination for Convenience**

DIR or Vendor 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 if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

**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. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing services under the Contract have no power to terminate the Contract for default.

**b) Purchase Order**

Customer or Vendor may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above. 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

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any other remedies it may have available, cancel and terminate the Purchase Order.

**5) Customer Rights Under Termination**

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued with respect to all services ordered and accepted prior to the effective termination date.

**6) Vendor Rights Under Termination**

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

**C. Force Majeure**

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

**9. Notification**

**A. Notices**

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

**B. Handling of Written Complaints**

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

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

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**10. Captions**

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

**11. Statement of Services to Be Performed**

- A.** Vendor shall provide Worker(s) to DIR Customers to perform services that are defined in the Work Order Solicitation, in accordance with the terms and conditions of the Contract. Workers provided by Vendor shall possess qualifications that meet or exceed those specified in the Work Order Solicitation and will perform the functions as outlined in the Work Order Solicitation at the rates quoted therein. All travel is subject to the prior, written approval of the Customer.
- B.** Vendor understands that this is a non-exclusive, indefinite quantity contract. DIR makes no representations or warranties that Vendor shall receive any number or volume of Work Order Solicitations hereunder.

**12. Work Order Solicitation / Purchase Order Issuance**

- A.** In order to be awarded a Purchase Order hereunder, except for Best Value Selection, Vendors will respond to Work Order Solicitation(s) for services as issued by DIR on behalf of its Customers, consistent with the Terms and Conditions of this Contract. Vendor understands that no work under any Purchase Order issued by Customer shall commence until receipt of Purchase Order. Vendor will perform in accordance with the terms and conditions of the Customer Purchase Order.
- B.** Customer specifications may include pre-selection requirements that potential Vendors (and their Worker) submit to and satisfy criminal background checks as authorized by Texas law.
- C.** Vendor shall direct all communications concerning this Contract and any Work Order Solicitation(s) to DIR except for Customer initiated communications, the interview, the hiring process and Best Value Selections (See item F in this section).
- D.** DIR expects Vendor to participate in the Work Order Solicitation process. See Section 14, Vendor Opportunities and Performance Metrics, for performance metrics.
- E.** DIR will not promulgate a standard candidate resume format/layout. Awarded Vendor may submit candidate resumes in desired company format/layout. DIR, will however, require Vendor to accompany candidate resume(s) with approved DIR cover sheet/format standard.
- F.** Best Value Selections. Customer shall select the Worker and provide DIR with the appropriate procurement documentation to support the selection.

**13. Hourly Rates**

- A.** Hourly rate shall never exceed NTE rate unless authorized, in writing, by DIR

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- B. The Vendor shall quote hourly rates to DIR in response to Work Order Solicitation(s) provided by DIR on behalf of its Customer during the term of this Contract. Hourly rates shall not exceed awarded rates quoted in this Contract. Hourly rates quoted in a particular Purchase Order shall remain valid for a period of time specified in the Purchase Order. Vendor shall not increase its rates under any Purchase Order, including amendments/Purchase Order Change Notice (POCN) thereto, without the express prior written approval of Customer.
- C. All quoted hourly rates shall include all expenses associated with each Worker, including wages, benefits, DIR Administrative Fee, usual living expenses and costs of commuting to and from the Customer's primary work site designated. Travel reimbursement may be allowed. See Section 5, Purchase Orders, Invoices and Contract Section 4. Payments, D. Travel for allowable expenses.

**14. Vendor Opportunities and Performance Metrics**

DIR will conduct routine assessments of Vendor performance and will use that information to institute a Tiered Vendor Structure. As defined below, opportunities available to Vendors will vary based on the tier in which they reside. Movement between the tiers will be based on performance as defined in the quantitative and qualitative measures defined below.

**A. Tiered Vendor Structure**

The Tiered Vendor Structure will be comprised of two tiers: Active Vendors and Suspended Vendors.

- 1) Active Vendors Tier – Active Vendors are given access to opportunities presented through Work Order Solicitations and Best Value Selections.
  - a) Vendor will be a member of the Active Vendors Tier for the first two evaluation periods.
  - b) Vendor shall earn an acceptable status when it scores above the 25th percentile of the scores of all Active Tier Vendors. If Vendor scores below or equal to the 25th percentile, Vendor will earn an unacceptable status.
  - c) If Vendor maintains an unacceptable status for two consecutive evaluation periods, Vendor is subject to being suspended from its contract (the Suspended Vendors Tier).
- 2) Suspended Vendors Tier – Suspended Vendors are not provided access to opportunities presented through Work Order Solicitations or Best Value Selections. Suspension is detailed in Section 15, Vendor Suspension/Demotion, of this document.
- 3) Exceptions – DIR reserves the right to review evaluations on a case-by-case basis and to ultimately decide which status to assign to a Vendor.

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**B. Quantitative and Qualitative Measures**

Vendor shall be measured in five performance categories. These categories are listed below, along with their evaluation measurement detail:

- 1) **Successful Placement** – the number of Placed Candidates. Relative to the performance of other Vendors, the Vendor(s) placing the most Workers in a quarter will be awarded the full 20%. Vendors will be awarded a proportional percentage score relative to their performance. This measure represents 20% of the Vendors’ total score.
- 2) **Quality** – the number of Acceptable Candidates relative to the total number of resumes submitted by a Vendor and the number of Interviewed Candidates relative to the number of Acceptable Candidates submitted by a Vendor. Each of the aforementioned components of this measure is weighted equally and this measure represents 20% of the Vendor’s total score.
- 3) **Customer Satisfaction** – this score is the qualitative assessment of the candidates that a Vendor placed. DIR Staff will receive this information from Customers that have contracted workers. Each quarter the Vendor shall start out with the maximum number of 100 points. The points listed below in the “Customer Satisfaction Table” shall be deducted if an infraction occurs. Five (5) points will be deducted for every documented unique unsatisfactory incident received about the Vendor or the contracted worker. A Vendor can score no lower than 0 of the possible 100 points. This measure represents 20% of the Vendors’ total score.
- 4) **Compliance** – this score is based on the observance of contractual standards. Each quarter the Vendor shall start with the maximum number of 100 points. The points listed below in “Compliance Table” shall be deducted if an infraction occurs. A Vendor can score no lower than 0 of the possible 100 points. This measure represents 20% of the Vendor’s total score.
- 5) **Responsiveness** – the number of Work Order Solicitations to which the Vendor responded, within the prescribed time, during a quarter. This measurement will be tracked at the Title level (the structure of job descriptions employed here is: Category, Title, and Level). This measure does not count the number of candidates, but rather the number of solicitations where the Vendor submitted at least one candidate. Responsiveness represents 20% of the Vendors’ total score.

**Customer Satisfaction Table**

<b>Infraction</b>	<b>Point Deduction</b>
Submitting the name(s) of current Worker(s) for an overlapping time frame.	-5 each occurrence
Duplicate candidate resumes (without right to represent)	-5 each occurrence
Documented unsatisfactory incident	-5 each occurrence

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Submitting inaccurate resumes to DIR	-15 each occurrence
Submitting resumes in an unapproved format to DIR	-15 each occurrence

**Compliance Table**

<b>Infraction</b>	<b>Point Deduction</b>
Failure to communicate staff and point-of-contact changes to DIR	-5 each occurrence
Failure to update Certificate of Insurance	-10 per month that passes since expiration date
Late Sales Report	-15 each occurrence
Incorrect Sales Report	-15 each occurrence
Submitting resumes/candidates to hiring managers outside the DIR process	-50 each occurrence, and suspension or termination for cause, at DIR's discretion

DIR reserves the right to alter the performance categories and the percentages used for measurement of Vendor performance. Vendor shall be notified of any changes and shall cooperate to amend the contracts.

**15. Vendor Suspension/Demotion**

DIR's Right to Suspend Contract Performance for Cause in accordance with this Section and Section 14, Vendor Opportunities and Performance Metrics: DIR may suspend Vendor's performance of this Contract, in whole or in part, for a period up to 180 calendar days by following the procedure in this paragraph. When a violation of the contract as set forth below occurs, DIR may send a Notice of Intention to Suspend to the Vendor providing the reasons for the proposed suspension. Vendor shall have five (5) business days from receipt of the Notice of Intention to Suspend to provide a written response. At the expiration of the 5 business days, DIR will make a determination whether a violation(s) of the contract occurred. In those instances where a violation is found to have occurred, DIR shall decide on a period of suspension up to 180 calendar days in length and send a written notice of the period of suspension and the related findings to Vendor. The suspension shall be effective from the date of receipt by Vendor. DIR may issue a Notice of Intention to Suspend under the proper circumstances, which include, but are not limited to the events listed below:

- 1) Vendor or Vendor's Worker(s) no longer holds necessary license(s) or certificate(s) required to perform the work under any Work Order;
- 2) Vendor falsifies an invoice for services or travel reimbursement;
- 3) Vendor contacts a DIR Customer concerning any Contract, Work Order, or solicitation without the prior consent of DIR;

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- 4) Vendor or its Workers have engaged in practices prohibited in Section 5, Purchase Orders, Invoices and Payments hereof; Section 7, Vendor Responsibilities; hereof; and Section 7, Intellectual Property Matters, in the Contract;
- 5) Vendor or Vendor's Worker commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Vendor's performance under this Contract in accordance with its terms.
- 6) Failure to maintain an acceptable level of performance under Section 14, Vendor Opportunities and Performance Metrics, hereof.

During the period of suspension, a Vendor shall continue to perform under any outstanding Purchase Orders, but will not be authorized to participate in or receive any additional Work Order Solicitation(s) or Purchase Orders.

At the conclusion of the suspension, DIR will issue a Notice of Intention to Reinstate to establish the date the suspension is lifted.

For Vendors receiving an unacceptable status for one evaluation period under Section 14, Vendor Opportunities and Performance Metrics, hereof, DIR will provide written notice of the consequences of continued unacceptable status, which includes the possibility of suspension and/or termination under this section of the Contract.

**16. Substitution of Workers**

- A. If Customer determines the Worker does not meet the qualifications needed, has not followed applicable safety standards or for any other reason is unable to complete the assignment satisfactorily, Customer will direct Vendor to resolve the complaint or remove its Worker immediately. If Vendor is unable to resolve the complaint immediately or provide a satisfactory substitute Worker within seven (7) business days, the Purchase Order may be terminated and Customer may select another Vendor to finish the remaining work as outlined in the Work Order Solicitation
- B. If a Worker no longer provides services for Vendor, Vendor shall have up to seven (7) business days to replace the Worker with a substitute satisfactory to DIR and its Customer. Vendor shall use its best efforts to provide a substitute Worker at the same, or a lower rate than that charged for the replaced Worker's services. If the rate for the substitute Worker is higher than the rate charged for the replaced Worker's services and the higher rate is unacceptable to DIR, or if the Vendor is unable to provide a satisfactory substitute Worker within seven (7) business days, the appropriate Work Order may be terminated and DIR may select another Vendor to finish the remaining work.
- C. In the event the Worker cancels his/her obligation without cause prior to the original termination date, Customer may require the Vendor to provide a replacement to complete the obligation that the departing individual did not fulfill. The replacement

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must be approved by Customer and will be provided at no charge for a time equal to seven (7) business days, not to exceed fourteen (14) business days. This gratis period is to cover the cost to Customer of retraining the replacement individual on the internal Customer systems.

- D.** Except when a Worker leaves employment voluntarily, the Vendor may not remove a Worker from a project without prior written consent of DIR.
- E.** Vendor is responsible to retrieve from all Workers as they transition from work on a Work Order, whether voluntarily or involuntarily, all keys, access cards, files, equipment and all other property and security devices that may have been issued to Worker by DIR's Customer and to deliver the items to the Customer.

**17. Predatory Actions; Submission of Workers' Names by Multiple Vendors**

- A.** The Vendor shall not hire employees of a DIR Customer and offer such employees as Workers for a Work Order Solicitation on which that employee is currently participating. Unless an employee is released from employment, Vendor shall not hire an employee of another Vendor providing Workers to a DIR Customer and offer such employee as Workers for a Work Order Solicitation on which that Worker is currently participating until such time as the Purchase Order under which that Worker was originally obtained has expired or been terminated pursuant to Section 8B.
- B.** No Worker whose name is submitted by more than one Vendor for the same Work Order will be considered for placement with a DIR Customer.
- C.** No Worker who is currently on contract to a Customer through the DIR ITSAC program will be considered for additional DIR Work Order Solicitations having overlapping timeframes. However, at the discretion of a DIR Customer, Workers who are currently assigned to a DIR Customer through the DIR ITSAC program may be considered for additional DIR ITSAC work from the same DIR Customer. Vendors shall not submit the names of the same Worker for an overlapping time frame unless previously agreed to by the Customer.

**18. Alcohol and Drug Free Workplace**

Possession, use, or being under the influence of alcohol or controlled substances by Vendor Workers while in the performance of this Contract is prohibited.

**19. No Solicitation of State Employees**

- A.** Vendor shall not solicit, directly or indirectly, any employee of DIR who is associated with this Contract for a period of 90 calendar days following completion of the Contract. Further, Vendor shall not solicit for a period of 90 days following completion of the Work Order, directly or indirectly, any employee of a DIR Customer who has participated in any projects on which the Vendor's Workers have been assigned.

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**B.** DIR and its Customer agree not to solicit employees of the Vendor, during the term of the appropriate Work Order, and for a period of 90 calendar days thereafter.

**20. Warranty**

The Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor has made errors in completed work. Customer will immediately inform the Vendor of the Customer's determination. The Vendor shall make such corrections and revisions as are necessary so that the Work Products complained of are acceptable to Customer and shall be corrected without cost to Customer. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original work.