



**GLO CONTRACT NO. 16-141-000-9425  
SUPPLEMENTAL AGREEMENT TO THE PURCHASE ORDER  
UNDER DIR CONTRACT NO. DIR-SDD-2365**

THE GENERAL LAND OFFICE (the “GLO”) and STELLARGY SERVICES, LLC, Tax Identification Number 1203882288300 (“Provider”) (each a “Party” and collectively the “Parties”), enter into the following supplemental agreement for Deliverables-Based Information Technology Services (the “Supplemental Agreement”) pursuant to the State Purchasing and General Services Act, TEX. GOV’T CODE ANN., Subtitle D, Chapters 2155-2262. Services shall be performed in accordance with the Texas Department of Information Resources (“DIR”) Contract No. DIR-SDD-2365 (the “Contract”) and this Supplemental Agreement. This Supplement Agreement amends the Purchase Order associated with this Supplemental Agreement.

**I. DEFINITIONS / INTERPRETIVE PROVISIONS / PROJECT DESCRIPTION**

**1.01 DEFINITIONS**

“[Administrative and Audit Regulations](#)” means the statutes and regulations included in Chapter 321 of the Government Code; Subchapter F of Chapter 2155 of the Government Code; and the requirements of Article VII herein. State agencies and/or designee’s with the authority to audit and inspect include, the GLO, the GLO’s contracted examiners, the State Auditor’s Office, the Texas Attorney General’s Office and the Texas Comptroller of Public Accounts.

“[Appendix](#)” means documents, terms, conditions, or additional information physically added to DIR Contract DIR-SDD-2365, or included by reference, as if physically attached.

“[Attachment](#)” means documents, terms, conditions, or additional information physically added to this Supplemental Agreement following the execution page or included by reference, as if physically, within the body of this Supplemental Agreement.

“[Contract](#)” means DIR Contract No. DIR-SDD-2365 and all Attachments, Appendices, and Exhibits, Purchase Orders, and this Supplemental Agreement to the Purchase Order which has been assigned GLO Contract No. 16-141-000-9425.

“[Deliverables](#)” means a unit or increment of work to include, any item, report, data, document, photograph, or other submission required to be delivered under the terms of this Contract, in whatever form.

“[GAAP](#)” means generally accepted accounting principles.

“GAAS” means generally accepted accounting standards.

“GASB” means the Governmental Accounting Standards Board.

“General Affirmations” means the affirmations in **Attachment B**, attached hereto and incorporated herein in its entirety for all purposes, to which Provider certifies by the signing of this Supplemental Agreement.

“GLO” means the Texas General Land Office, its officers, employees, and designees.

“PIA” means the Public Information Act, Chapter 552 of the Texas Government Code.

“Project” means the information technology services provided pursuant to this Purchase Order and Supplemental Agreement and further detailed in Section 1.03.

“Provider” means Stellargy Services, LLC, selected to provide the services under the Supplemental Agreement.

“Purchase Order” means the financial purchase document used to purchase services under this Supplemental Agreement.

“Subcontractor” means an individual or business that signs a contract, or enters into an agreement with Provider, to perform part or all of the obligations of Provider under this Contract.

“Supplemental Agreement” means this document, which modifies the Purchase Order, for purposes of all work performed by Provider to complete the Project.

“Work” means all services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including but not limited to Deliverables, in the performance of the Project.

## 1.02 INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not

prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;

- (d) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (e) All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract;
- (f) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the GLO or by the GLO by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the GLO shall not be unreasonably withheld or delayed;
- (h) Time is of the essence in this Contract.
- (i) In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract; Attachments to the Contract: Attachment A, Attachment B, Attachment C, and Attachment D.

### **1.03 PROJECT**

Upon the issuance of a Purchase Order under this Supplemental Agreement, if any, Provider shall supply Deliverables-Based Information Technology Services (the “Project”). The Project shall be performed in accordance with DIR Contract No. DIR-SDD-2365, attached hereto and incorporated herein for all purposes in its entirety as **Attachment A**; this Supplemental Agreement; and all Appendices or Attachments to either document as well as any Purchase Order.

### **1.04 REPORTING REQUIREMENTS**

Provider shall timely submit all reports and documentation that are required under the Contract, this Supplemental Agreement, and their corresponding Purchase Order. As well as any additional reports or documentation as requested by the GLO Project Manager, Brandon Rogers at [Brandon.Rogers@GLO.Texas.Gov](mailto:Brandon.Rogers@GLO.Texas.Gov).

Reports shall include progress on the Project; hours worked by each Provider employee or subcontractor; obstacles encountered, if any; plans to resolve them; and work planned for the subsequent reporting period. Reporting schedules may be revised by the GLO as required during the course of the Project for successful completion thereof.

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## **II. TERM**

### **2.01 DURATION**

This Supplemental Agreement shall be effective as of the date executed by the last Party and shall terminate on August 31, 2016, or upon the earlier expiration or termination of the Contract, in accordance with **SECTION 2.02** below. The GLO, at its own discretion, may extend this Contract subject to terms and conditions mutually agreeable to both Parties.

### **2.02 EARLY TERMINATION**

The GLO may terminate this Supplemental Agreement, by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of any such notice, Provider shall cease work, undertake to terminate any relevant subcontracts, and incur no further expense related to the Project. Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.

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### III. CONSIDERATION

#### **3.01 SUPPLEMENTAL AGREEMENT LIMIT, FEES, AND EXPENSES**

Provider will be compensated in accordance with the Provider's Proposal in **Attachment C**, in an amount not to exceed **THIRTY-FIVE THOUSAND FOUR HUNDRED SEVENTY-ONE DOLLARS AND FORTY-THREE CENTS (\$35,471.43)**.

Requests for payment must:

- (a) be submitted to [vendorinvoices@glo.texas.gov](mailto:vendorinvoices@glo.texas.gov); with a copy to the GLO Project Manager at [Brandon.Rogers@GLO.Texas.Gov](mailto:Brandon.Rogers@GLO.Texas.Gov); and
- (b) be supported by documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred; and
- (c) **prominently display "GLO Contract No. 16-141-000-9425."**

Failure to submit requests for payment as instructed may significantly delay payment under the Supplemental Agreement.

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#### **IV. PROVIDER'S WARRANTY**

##### **4.01 PERFORMANCE WARRANTY**

Provider warrants that all Work performed under this Supplemental Agreement will be performed in a manner consistent with a degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Provider warrants that all Deliverables under this Supplemental Agreement shall be completed in a manner consistent with standards under the terms of this Supplemental Agreement, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated Attachments (if any); and shall be fit for ordinary use, of good quality, and with no material defects. If Provider fails to complete Deliverables timely or to perform satisfactorily under conditions required by this Supplemental Agreement, the GLO may require Provider, at its sole expense, to (a) repair or replace all defective or damaged Deliverables; (b) refund any payment received for all defective or damaged Deliverables and, in conjunction therewith, require Provider to accept the return of such Deliverables; and/or (c) take necessary action to ensure that future performance and Deliverables conform to the Supplemental Agreement requirements.

##### **4.02 GENERAL AFFIRMATIONS**

To the extent that they are applicable, Provider further certifies that the General Affirmations in **Attachment B** have been reviewed, and that Provider is in compliance with each of the requirements reflected therein.

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**V. STATE FUNDING**

**5.01 STATE FUNDING**

- (a) The Supplemental Agreement shall not be construed as creating any debt on behalf of the State of Texas or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, it is understood that all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Supplemental Agreement and any Purchase Order associated with this Supplemental Agreement, may be terminated. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
  
- (b) Furthermore, any claim by Provider for damages under the Supplemental Agreement and any associated Purchase Order may not exceed the amount of funds appropriated for payment, but not yet paid to Provider, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

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**VI. BOOKS AND RECORDS, INSPECTION AND AUDIT,**  
**PUBLIC DISCLOSURE, AND RETENTION**

**6.01 BOOKS AND RECORDS**

Provider shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the GLO, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives sufficient information to determine compliance with the terms and conditions of the Supplemental Agreement and all state rules, regulations, and statutes.

**6.02 INSPECTION AND AUDIT**

Pursuant to Texas Gov't Code Chapter 2262, Provider agrees that all relevant records related to the Supplemental Agreement including the records of its Subcontractors, shall be subject to the Administrative and Audit Regulations. Provider understands that acceptance of state funds under Purchase Order, if any, acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Accordingly, such records shall be subject at any time to inspection, examination, audit, and copying at any location where such records may be found, with or without notice from the GLO or other government entity with necessary legal authority. Provider agrees to cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all relevant records and information requested. **The Comptroller General, the General Accounting Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection. PROVIDER SHALL ENSURE THAT ALL SUBCONTRACTS AWARDED REFLECT THE REQUIREMENTS OF THIS SECTION 6.02, AND THE REQUIREMENT TO COOPERATE.**

**6.03 CONFIDENTIALITY**

To the extent permitted by law, Provider and the GLO agree to keep all information confidential, in whatever form produced, prepared, observed, or received by Provider or the GLO to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Provider or the GLO; or (c) information that Provider or the GLO is otherwise required to keep confidential according to the terms of the Supplemental Agreement. Furthermore, Provider will not advertise that it is doing business with the GLO, use the Supplemental Agreement as a marketing or sales tool, or make any press releases concerning the Project without the prior written consent of the GLO.

**6.04 PUBLIC RECORDS**

Pursuant to Texas Gov't Code Chapter 2261, Provider agrees this Contract, including Provider's response to the solicitation and/or proposal(s) submitted prior to this contract award, shall be posted to the GLO's website. Information related to the performance of the

Project may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Provider shall make any information required under the PIA available to the GLO in portable document file (".pdf") format or any other format agreed between the Parties. Failure of Provider to mark as "confidential" or a "trade secret" any information that it believes to be excepted from disclosure waives any and all claims Provider may make against the GLO for releasing such information without prior notice to Provider. Provider shall notify GLO's General Counsel within twenty-four (24) hours of receipt of any third party written requests for information, and forward a copy of said written requests to [PIALegal@glo.texas.gov](mailto:PIALegal@glo.texas.gov). If request was not written, Provider shall forward the third party's contact information to the above-designated e-mail address.

#### **6.05 PERIOD OF RETENTION**

All records relevant to this Supplemental Agreement shall be retained for a minimum of seven (7) years. The period of retention begins at the date of payment by the GLO for the goods or services or from the date of termination of the Supplemental Agreement, whichever is later. The period of retention shall be extended for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation that may ensue.

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## VIII. MISCELLANEOUS PROVISIONS

### **7.01 INSURANCE**

Provider shall acquire, for the duration of this Supplemental Agreement, insurance and with financially sound and reputable independent insurers licensed by the Texas Department of Insurance, in the type and amount and in the form required by **Attachment D** of this Contract, **APPENDIX A**. Furthermore Provider may be requested to submit evidence of insurance as required under this Supplemental Agreement, including (if requested) a schedule of coverage (or “underwriter’s schedules”) establishing to the satisfaction of the GLO the nature and extent of coverage granted by each such policy. In the event that any policy is determined to be deficient to comply with the terms of this Supplemental Agreement, Provider shall secure such additional policies or coverage as the GLO may reasonably request or that are required by law or regulation. If coverage expires during the term of this Supplemental Agreement, Provider must produce renewal certificates for each type of coverage.

### **7.02 LEGAL OBLIGATIONS**

Provider shall procure and maintain for the duration of the Project any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Provider to provide the services required under this Supplemental Agreement. Provider will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Provider agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of the Project.

### **7.03 NOTICES**

Any notices required under the Supplemental Agreement, shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**GLO**

Texas General Land Office  
1700 N. Congress Avenue  
Austin, TX 78701  
Attention: Legal Services Division

**Provider**

Stellargy Services, LLC  
5316 W HWY 290  
Suite 200  
Austin, TX 78735  
Attention: Mark Roberts, CFO

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

#### **7.04 SEVERABILITY**

If any provision contained in the Contract, Supplemental Agreement and Purchase Order, if any, is held to be unenforceable by a court of law or equity, the Contract, Supplemental Agreement and Purchase Order, if any, shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of the Contract, Supplement Agreement or Purchase Order, if any, unenforceable.

#### **7.05 INDEMNITY**

**PROVIDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE GENERAL LAND OFFICE AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:**

- **ANY NEGLIGENT ACTS OR OMISSIONS OF PROVIDER, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROVIDER, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF PROVIDER, IN THE EXECUTION OR PERFORMANCE OF THE PROJECT; OR**
- **ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY PROVIDER, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROVIDER, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF PROVIDER, IN THE EXECUTION OR PERFORMANCE OF THE PROJECT.**

**PROVIDER SHALL COORDINATE ITS DEFENSE WITH THE GENERAL LAND OFFICE AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE PROVIDER TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE GENERAL LAND OFFICE FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE GROSS NEGLIGENCE OF THE GENERAL LAND OFFICE OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS SUPPLEMENTAL AGREEMENT.**

#### **7.06 FORCE MAJEURE**

Except with respect to the obligation of payments under the Supplemental Agreement, if either of the parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Supplemental Agreement by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected party (collectively referred to as a

“Force Majeure”), then, while so prevented, the affected party’s obligation to comply with such covenant shall be suspended, and the affected party shall not be liable for damages for failure to comply with such covenant. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the GLO may terminate the Supplemental Agreement and Purchase Orders if any, immediately upon written notification to Provider.

**7.07 DISPUTE RESOLUTION**

If a dispute as to the services provided under the Supplemental Agreement arises that cannot be resolved to the satisfaction of the parties, either party may notify the other party in writing of the dispute. If the parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision shall not apply to any matter with respect to which either party may make a decision within its respective sole discretion.

**7.08 ENTIRE SUPPLEMENTAL AGREEMENT AND MODIFICATION**

The Contract and Supplemental Agreement, including any integrated Attachments, Appendices, Exhibits, and corresponding Purchase Order, if any, constitute the entire agreement of the parties, and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in such Attachment(s) and/or purchase order shall be harmonized with the Contract, Supplemental Agreement and Purchase Order, if any, to the extent possible. Unless such integrated Attachment or Purchase Order specifically displays a mutual intent to amend a particular part of this Supplemental Agreement, general conflicts in language shall be construed consistently with the terms of the Supplemental Agreement.

**7.09 COUNTERPARTS**

The Supplemental Agreement may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Supplemental Agreement. If the Supplemental Agreement is not executed by the GLO within thirty (30) days of execution by the Provider, the Supplemental Agreement may be nullified with notice from the GLO.

**7.10 PROPER AUTHORITY**

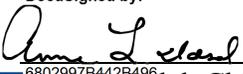
Each party hereto represents and warrants that the person executing this Supplemental Agreement on its behalf has full power and authority to enter into this Supplemental Agreement. Provider acknowledges that this Supplemental Agreement is effective for the period of time specified in the Supplemental Agreement. Any services performed by Provider before this Supplemental Agreement is effective or after it ceases to be effective are performed at the sole risk of Provider.

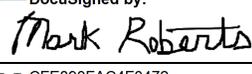
**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SUPPLEMENTAL AGREEMENT  
GLO CONTRACT No. 16-141-000-9425  
UNDER DIR CONTRACT No. DIR-SDD-2365**

**GENERAL LAND OFFICE**

**STELLARGY SERVICES, LLC**

DocuSigned by:  
  
Anne L. Isdal, Chief Clerk/  
Deputy Land Commissioner

DocuSigned by:  
  
Name: Mark Rogers  
Title: CFO

Date of execution: 10/8/2015

Date of execution: 10/6/2015

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**ATTACHMENTS TO THIS SUPPLEMENTAL AGREEMENT:**

- ATTACHMENT A – DIR CONTRACT No. DIR-SDD-2365**
- ATTACHMENT B – GENERAL AFFIRMATIONS**
- ATTACHMENT C- PROVIDER’S PROPOSAL**
- ATTACHMENT D – APPENDIX A**

**ATTACHMENTS FOLLOW**

DIR Contract No. DIR-SDD-2365

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

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES****CONTRACT FOR  
INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES (ITSAC)****STELLARGY SERVICES, LLC****1. Introduction****A. Parties**

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Stellargy Services, LLC (hereinafter "Vendor"), with its principal place of business at 5316 Hwy 290 W, Suite 200, Austin, Texas 78735.

**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-204, on March 12, 2013, for Information Technology Staffing Augmentation Contracts. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-204 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Information Technology Staff Augmentation Contracts (ITSAC); Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Services and Pricing Index; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-204, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-204, 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 this Contract, upon mutual agreement, for up to two (2) optional one-year terms. If there are no sales at the end of the initial term, this Contract may not be renewed. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

**3. Service Offerings**

Services available under this contract are limited to information technology staff augmentation services as specified in Appendix C, Services and Pricing Index.

**DIR Contract No. DIR-SDD-2365****Vendor Contract No. \_\_\_\_\_****4. Pricing****A. Pricing**

Pricing shall be in accordance with Appendix C, Services and Pricing Index.

**B. Cost Recovery Fee (CRF)**

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

**C. 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).

**D. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**5. DIR Cost Recovery Fee**

**A)** The cost recovery fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one percent (1.00%). Payment will be calculated for all sales, net of returns and credits. For example, the Cost Recovery Fee (CRF) for sales totaling \$100,000 shall be \$1000.00.

**B)** All prices quoted to Customers shall include the CRF. 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 CRF 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.

DIR Contract No. DIR-SDD-2365

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

If sent to the State:

Grace Windbigler, CTPM, CTCM  
Enterprise Contract Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 463-2861  
Facsimile: (512) 475-4700

If sent to the Vendor:

Charlyne Young  
Stellargy Services, LLC  
5316 Hwy 290 W, Suite 200  
Austin, TX 78735  
Phone: 512-394-3444 x 103  
Facsimile: 512-891-0029  
Email: cyoung@stellargy.com

**7. 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 elements 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.

**DIR Contract No. DIR-SDD-2365****Vendor Contract No. \_\_\_\_\_**

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 not a party to this Contract, and which 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

**DIR Contract No. DIR-SDD-2365****Vendor Contract No. \_\_\_\_\_**

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 subparagraph H. Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

**F. Injunctive Relief.**

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights

**DIR Contract No. DIR-SDD-2365****Vendor Contract No. \_\_\_\_\_**

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 pertains 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.

**DIR Contract No. DIR-SDD-2365**

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

**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.

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Information Technology Staff Augmentation Services (ITSAC).**

No exceptions have been agreed to by DIR and Vendor.

**Remainder of page intentionally left blank**

**DIR Contract No. DIR-SDD-2365**

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

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

**STELLARGY SERVICES, LLC**

**Authorized By:** signature on file

**Name:** Charlyne Young

**Title:** CEO/President

**Date:** 7/23/13

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

**Authorized By:** signature on file

**Name:** Karen Robinson

**Title:** Executive Director

**Date:** 8/7/13

**Office of General Counsel:** 8/6/13

### GENERAL AFFIRMATIONS

Provider agrees without exception to the following affirmations:

1. The Provider has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.
2. Pursuant to Title 10, Section 2155.004 of the Texas Government Code, the Provider has not received compensation from the GLO for preparing any part of this Contract.
3. Under Section 231.006, Family Code, Provider certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Any Provider subject to this section must include names and Social Security Numbers of each person with at least twenty-five percent (25%) ownership in the business entity named in this Contract. This information must be provided prior to execution of any offer.
4. Provider certifies by signing this Attachment that: (a) the entity executing this Contract; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to the work herein described are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal Department or Agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as Pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Provider's subcontracts if payment in whole or in part is from federal funds.
5. In addition, Provider certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that the participants named in items 4(a) through 4(d) above are not listed on the federal government's terrorism watch list described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>, which Provider may review in making this certification. Provider acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. This provision shall be included in its entirety in Provider's subcontracts if payment in whole or in part is from federal funds.
6. Provider 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.
7. Provider certifies that it is 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 this section applies, Provider will complete the following information in order for the bid to be evaluated:

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Position with Provider: \_\_\_\_\_

Date of Employment with Provider: \_\_\_\_\_

- 8. Provider agrees to comply with Texas Government Code, Title 10, Subtitle D, Section 2155.4441, relating to the purchase of products produced in the State of Texas under service contracts.
- 9. Provider understands that acceptance of funds under this Contract 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. Provider further agrees to cooperate fully with the State Auditor’s Office, or its successor, in conducting the audit or investigation, including providing all records requested. Provider will ensure that this clause is included in any subcontract it awards.
- 10. Provider certifies that if it employs any former employee of the GLO, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee’s last date of employment at the GLO.
- 11. Provider shall not discriminate against any employee or applicant for employment because of race, disability, color, religion, sex, age, or national origin. The Provider shall take affirmative action to ensure that applicants are employed and that employees are treated without regard to their race, color, sex, religion, age, disability, or national origin. Such action shall include, but is not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Provider agrees to post notices, which set forth the provisions of this non-discrimination article, in conspicuous places available to employees or applicants for employment. Provider shall include the above provisions in all subcontracts pertaining to the work.
- 12. Provider understands that the GLO does not tolerate any type of fraud. The GLO’s policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Providers are expected to report any possible fraudulent or dishonest acts, waste, or abuse affecting any transaction with the GLO to the GLO's Internal Audit Director at 512.463.5338 or to [tracey.hall@glo.texas.gov](mailto:tracey.hall@glo.texas.gov).

**NOTE: Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the "Public Information Act," Chapter 552 of the Texas Government Code.**

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**Proposal**  
**State of Texas, Texas General Land Office**

This proposal, effective as of \_\_\_\_\_ (“Effective Date”), is between Stellargy Services, LLC. (“Stellargy”) and the State of Texas, Texas General Land Office (“Client”).

**Client Contact:** Brandon Rogers  
**Telephone Number:** (512) 463-5763

**1. Overview**

Stellargy Services, LLC. is pleased to respond to your inquiry into our services. This proposal describes our general information security consulting services, which provides customers with a set of hours to be worked towards information security projects.

**2. Projected Term**

Start Date: September 14, 2015  
Allocated Hours: 219 hours

**3. Stellargy Services, LLC. – Scope of Services**

**a) Task 1: HIPAA Security Risk Assessment**

This task addresses TxGLO’s immediate need to obtain a HIPAA security risk assessment.

<b>Determine Scope of PHI Environment</b>	Stellargy will work with key staff members, government contacts, and supplied information on the identification of processes and systems that are intended to transmit, store, or process PHI. Stellargy will document the intended systems and processes that handle PHI and thus establish the boundaries for the HIPAA Security Risk Assessment. It is assumed that these systems will be limited to a billing system and minimal support components required around the need to understand services performed and billed at the eight Veteran Homes. <b>Deliverables:</b> HIPAA Security Risk Assessment Scope Document.
<b>HIPAA Security Gap Assessment</b>	A HIPAA Security Gap Assessment is a review of security controls in place or planned against the HIPAA Security, OMNIBUS, and HITECH requirements.  Stellargy will perform a thorough analysis of the available system documents and interviews key staff members assess the existing and planned security controls. The creation of the gap assessment document requires an understanding of the system boundaries, functions, interconnections with other systems, and management, operational, and technical controls in place and

	<b>Deliverables:</b> TxGLO HIPAA Security Gap Assessment Report and Matrix.
<b>Security Risk Assessment:</b>	A required HIPAA security control for all PHI systems is the completion of a periodic security risk assessment. Stellargy will perform and document a security risk assessment based on NIST guidance and improved through the application of efficient data gathering (i.e., the RIIOT approach) and risk analysis.  <b>Deliverables:</b> HIPAA-compliant TxGLO Security Risk Assessment

**b) Project Scoping Parameters**

Parameter	Value	Notes
Physical Locations	3	HQ, and two sample Vet Homes (if applicable)
Existing Policies and Procedures	Less than 100 pages	None
Key Staff Interviews	5-10 individuals cover the following topics	<ul style="list-style-type: none"> <li>Touchstone Relationship and Requirements</li> <li>System Boundaries, Design, and Functions</li> <li>General Support Systems (e.g., Infrastructure, Physical Controls, Authentication Services)</li> <li>Existing Security Policies</li> </ul>
System	2	<ul style="list-style-type: none"> <li>Financial System – Accounting data necessary for billing of medical services</li> <li>Supporting Components – Supporting systems or components required to process, store or transmit PHI in support of Financial System.</li> </ul>

**4. Assumptions**

**a) TxGLO**

- i) Point of Contact (POC). The customer will provide a single point of contact to assist with the coordination of access to required information, documents, and interviews.
  - ii) Timely Documents. The customer will provide documents revealing existing policies, procedures, and architecture specifications in a timely manner.
  - iii) Working Environment. When onsite the customer will provide a safe working environment including workspace, computer monitor, telephone, and network or internet access if required.
-

- iv) **Building Access.** The customer will provide necessary building, parking and sensitive area access / badges to Stellargy consultants.
- v) **Participation.** Stellargy will rely on the customer staff to complete appropriate tasks and participate in interviews. Inability to participate in interviews and complete tasks in a timely manner will affect the completion of the Stellargy deliverables.
- vi) **Deliverables Review.** Deliverables will be reviewed by the customer and returned to Stellargy within 5 working days. Acceptance of the deliverable will be assumed if no comments are received from the customer during that time.

**b) Stellargy Services**

- i) **Confidentiality.** Stellargy consultants will consider all properly identified information and documentation as sensitive and will handle appropriately.
- ii) **Notification of Project Delays.** Stellargy project managers will notify the customer project manager of any delays in the project as soon as possible so that project impacts may be discussed quickly.
- iii) **Limited SOW.** Stellargy is not responsible for performing any services or tasks not specifically stated in this SOW.
- iv) **Responsibility.** Stellargy assumes no responsibility for other contractors or third parties engaged on related projects to the customer.

**5. Resource Team**

Prior to the delivery of any Service defined in this proposal, Client will designate a qualified member of its staff to act as a point of contact a liaison between Client and Stellargy Services, LLC. (the "Project Manager"). The POC will establish priorities, coordinate Client resource schedules, review progress, and assist in issue resolution.

Stellargy will be entitled to rely upon such person's representations and authority without seeking further verification. The POC Manager will be the person whom all Stellargy communications will be addressed, and the person who has the authority to act for Client in all aspects of the project. Client will provide adequate staff, dedicated to this SOW and available to Stellargy, to complete in a timely manner such tasks as may be assigned to it, including without limitation any training exercises, requirement definition, testing, and review and approval.

**6. Change management process**

In the event that unforeseen factors change this Services scope of work and/or impact the term and cost of Stellargy-provided Services, TxGLO and Stellargy may mutually revise the SOW and Stellargy shall provide customer with an estimate of the impact of such revisions on the fees, payment terms, completion schedule and other applicable provisions of the SOW. If the parties mutually agree to such changes, a written description of the agreed change ("Change Authorization") shall be prepared, incorporating such

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changes to the SOW and shall be signed by both parties. The terms of a Change Authorization Form prevail over those of the SOW. A copy of the Change Authorization Form is attached to this Statement of Work.

**7. Engagement Related Expenses**

~~Travel and expenses are not included in the estimate and will be billed as incurred. Stellargy will make every attempt to incur reasonable expenses associated with the implementation of the project. Valid expenses typically include parking, per diem, lodging, photocopying and communication costs. Travel costs include: airfare, mileage (if a personal car is used) and automobile rental.~~

**8. Notices**

**Client**

Point of Contact:	<b>Brandon Rogers</b>	_____
Telephone Num:	(512) 463-5763	_____
E-mail Address:	Brandon.Rogers@GLO.Texas.gov	_____
Fax Number:	_____	_____

**Stellargy Services, LLC.**

Project Manager:	Doug Landoll	_____
Telephone Num:	512-692-0835	_____
E-mail Address:	<a href="mailto:dlandoll@gmail.com">dlandoll@gmail.com</a>	_____
Fax Number:	_____	_____

**9. Changes to proposal and subsequent SOW**

Any Change to the scope of Services shall be requested and approved using the attached Project Change Request (PCR) Form.

This proposal shall be considered fully executed and binding when authorized representatives of both parties have signed and dated below.

**10. Acceptance and Authorization**

Method:      Bi-Weekly [ X ]      Milestone [ ]      At Project Completion [ ]      Prepaid [ ]

**Payment Schedule**

\_\_\_\_\_

- Stellargy will invoice (Customer) for services performed on a time and materials basis bi-weekly.
- ~~Each invoice is due and payable within 15 days of invoice date~~

**Terms and Conditions**

All work will be performed subject to the full terms and conditions listed in the Appendix.

- This offer is valid for 90 days from the date stated above.
- ~~In addition to fees, Stellargy will invoice for, and (Customer) agrees to pay, all reasonable travel and living expenses incurred by Stellargy personnel during the delivery of these services. (No travel is expected for this engagement).~~

**11. Project Pricing**

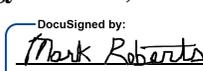
Description of Services	Role	Hourly Rate	Hours	Est. Cost
<b>Task 1: HIPAA Security Risk Assessment</b>				
<ul style="list-style-type: none"> <li>• PHI Environment Scope</li> <li>• HIPAA Security Gap Assessment</li> <li>• HIPAA Security Risk Assessment</li> </ul>	Security Architect (Emerging)	\$161.97	24 105 90	\$3,887.28 \$17,660.85 \$14,577.30
			<b>Total</b>	<b>\$35,471.43</b>

**Agreed by:**

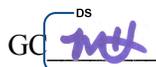
**TxGLO**

By:   
 Name: Anne L. Idsal  
 Title: Chief Clerk/Deputy Land Commissioner  
 Date: 10/8/2015

**Stellargy Services, LLC.**

By:   
 Name: Mark A. Roberts  
 Title: CFO  
 Date: 9/01/2015





# Project Change Request

This Project Change Request Form is entered into as of \_\_\_\_\_ (the "Effective Date"), and when fully executed by both parties become incorporated by reference into the Statement of Work for the State of Texas, Texas General Land Office between Stellargy Services, LLC. ("Stellargy") and State of Texas, Texas General Land Office. ("Client").

**Nature of the proposed change:**

**Reason for the Change:**

**Impact of the Change:**

**Project schedule:**

**Project pricing:**

**Other impact:**

**P.O. to which changes**

**will apply:**

**Signatures:**

This Project Change Request shall be considered fully executed and binding when authorized representatives of both parties have signed and dated below.

**State of Texas, Texas General Land Office**

**Stellargy Services, LLC.**

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

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

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

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

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

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

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

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

*Please file with Contract Services and the Project Control Office*

**Appendix A  
Standard Terms and Conditions  
For**

**INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES  
(ITSAC)**

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**Appendix A  
 Standard Terms and Conditions  
 For**

**INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES  
 (ITSAC)**

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**Appendix A  
Standard Terms and Conditions  
For**

**INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES  
(ITSAC)**

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**Appendix A**  
**Standard Terms and Conditions**  
**For**

**INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES**  
**(ITSAC)**

**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.

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- 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 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.
- I. **Active Vendor** – refers to Vendors that are given access to opportunities presented through Work Order Solicitations.
- J. **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.
- K. **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.
- L. **CRF**- refers to cost recovery fee.
- M. **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.
- N. **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.
- O. **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.
- P. **Interviewed Candidate** – refers to an Acceptable Candidate that was interviewed by the Customer pursuant to a Work Order Solicitation.
- Q. **Invoice** – refers to a Customer approved instrument submitted by Vendor for payment of services.
- R. **ITSAC** – refers to the IT Staff Augmentation Contract document executed between DIR and Vendor.
- S. **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.
- T. **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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- U. **Placed Candidate** – refers to an Interviewed Candidate that was selected by the Customer pursuant to a Work Order Solicitation.
- V. **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).
- W. **Rate Schedule** – refers to the set of competitive, market driven, standardized rates that will document the NTE hourly rates for ITSAC Workers.
- X. **TPASS** – refers to the Texas Procurement and Support Services Division of the Comptroller of Public Accounts (CPA).
- Y. **Vendor** – refers to awarded Information Technology Staff Augmentation Contract (ITSAC) Vendor.
- Z. **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.
- AA. **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.

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 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.

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3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendor.

**C. Invalid Term or Condition**

1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR do 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. 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.

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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. Vendor 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. Terms and Conditions Applicable to State Agency Purchases Only**

**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 of Texas 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 thirty (30) 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 of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

**5. 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. Internet Access to Contract and Pricing Information**

**1) Vendor Website**

Within thirty (30) days from the effective date of the Contract, Vendor will establish and maintain a website specific to the service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the services offered, service specifications, Contract pricing, contact information for Vendor, instructions for obtaining quotes and placing Purchase Orders. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph D of this Section, and contain a link to the DIR website for the Contract.

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**2) Accurate and Timely Contract Information**

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

**3) Website Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated within Section 4 of the Contract.

**4) Website Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to 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 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.

**C. Services Warranty and Return Policies**

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

**D. DIR Logo**

Vendor may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Vendor logo,

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(iii) the DIR logo is only used to communicate the availability of services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

**E. Vendor Logo**

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

**F. Trade Show Participation**

At DIR's discretion, Vendor may be required to participate in 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.

**G. 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.

**H. 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.

**6. 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.

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**B. Invoices**

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.

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. The statute states that payments for goods and services are due thirty (30) 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.

**7. 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 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 Cost Recovery Fee**

**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.

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

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [itsac.reports@dir.texas.gov](mailto:itsac.reports@dir.texas.gov). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, 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.

If Vendor submits three (3) monthly sales reports or cost recovery fee payments late within a 12-month period beginning upon execution of this Contract, DIR reserves the right to suspend or terminate this Contract for cause per Section 9.B.4.a. of Appendix A, Termination for Cause. If Vendor is late with its monthly sales report, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly report is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly sales reports. If Vendor is late with its monthly administrative fee payment, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly administrative fee payment is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly administrative fee payments. DIR does not waive any other contractual remedy pursuant to this Contract.

**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.

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

**4) DIR Cost Recovery Fee (CRF)**

a) A CRF fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum CRF is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the CRF shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. DIR may change the amount of the CRF upon thirty (30)

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days written notice to Vendor without the need for a formal contract amendment.

**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 CRF payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late CRF payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or CRF payments or deliver late reports and CRF 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 7.C.3 at DIR's expense.

**c)** Failure to timely submit three (3) reports within any rolling twelve (12) month period may, at DIR's discretion, result in termination of Vendor's Contract.

**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 other documentation as DIR may request.

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

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

**D. Contract Administration Notification**

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 ICT Cooperative Contracts E-Mail Box information.

**8. 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.**

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**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, 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

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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 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 of Texas and are not ineligible to receive payment under §231.006 of the Texas

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- 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) 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) 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;
  - (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) 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) that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
  - (xi) have 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, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
  - (xii) 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

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- 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;
- (xiii) represent and warrant that the Customer's payment and receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
  - (xiv) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; and
  - (xv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

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

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

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

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

**E. Equal Opportunity Compliance**

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

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**F. Use of Subcontractors**

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

**G. Responsibility for Actions**

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

2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 21 of Appendix A to the RFO and/or Section 8.C. (xi) and (xii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

**H. Confidentiality**

1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

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

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

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

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

Prior to commencement of any services, background and/or criminal history

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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 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 8.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 8.L.

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**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.

**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 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. 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

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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.

**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 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) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude compliance by Vendor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

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**R. Public Disclosure**

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

**S. Product and/or Services Substitutions**

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

**T. Secure Erasure of Hard Disk Managed Services Products and/or Services**

Vendor 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 data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC 202.

**U. Deceptive Trade Practices; Unfair Business Practices**

(a) 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.

(b) 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.

**V. Drug Free Workplace Policy**

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

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**9. 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.

**B. Termination**

**1) Termination for Non-Appropriation**

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

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

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

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

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**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 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, 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 Fulfiler 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 8.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

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

**5) Customer Rights Under Termination**

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

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

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

**C. Force Majeure**

DIR, Customer, or 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.

**10. 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.

**11. 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.

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- 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. Vendors cannot submit resumes outside of the process for competitive solicitations. (except when customer is using best value).
- D. 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.
- E. Vendor is prohibited from submitting a substitute candidate during the interview process if the original candidate is no longer available. Vendor may offer a replacement candidate, if the Purchase Order (PO) has been issued and the original candidate is no longer available.
- F. Duplicate submissions of a candidate will be disqualified, if one or more Vendors submit the same candidate for the same competitive solicitation.
- G. DIR will not promulgate a standard candidate resume format/layout. Awarded Vendor may submit candidate resumes in desired company format/layout. DIR will require Vendor to submit the approve DIR cover sheet with the candidate resume.
- H. Best Value Selections. Customer shall select the candidate and provide DIR with the appropriate procurement documentation to support the selection.

**12. Hourly Rates**

- A. The Vendor shall quote hourly bill 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 bill rates shall not exceed awarded NTE bill rates 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. In the event, that the Vendor submits an hourly bill rate that exceeds the NTE bill rate in the contract, the candidate will be submitted to the customer with an hourly bill rate that is reduced to the NTE hourly bill rate in the contract.
- B. All quoted hourly bill rates shall include all expenses associated with each candidate, including wages, benefits, DIR Cost Recovery Fee, usual living expenses and costs of commuting to and from the Customer's primary work site designated. Travel reimbursement may be allowed. See Appendix A Terms and Conditions Section 6. C. Payments and Contract Section 4. F. Travel Expense Reimbursement.
- C. Payment of work over 40 hours will be at the hourly rate quoted and must be coordinated and pre-approved through the customer.

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**13. Vendor Suspension**

DIR's Right to Suspend Contract for Cause in accordance with this Section. 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 Intent 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 Intent 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 Intent 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 is prohibited from contacting a Customer to discuss an "open" competitive solicitation during the Work Order Solicitation; however, Vendor is allowed to market their business to Customers.
- 4) Vendor or its Workers have engaged in practices prohibited in Section 6+, Purchase Orders, Invoices and Payments hereof; Section 8, 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.

**14. Substitution of Workers**

- A. During the ITSAC process for competitive Work Order Solicitations, Vendors can only submit candidates to DIR for the positions being solicited and not directly to the Customer.
- B. 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

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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

- C. 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.
- D. 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 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.
- E. Except when a Worker leaves employment voluntarily, the Vendor may not remove a Worker from a project without prior written consent of DIR.
- F. 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.

**15. ITSAC Protocol**

- 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 9.4) b). (Worker/Candidate is responsible for contractual obligations to the Vendor that initially submitted the worker/candidate to the Customer).
- B. Worker who is currently on contract to a Customer through the DIR ITSAC program will not 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

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shall not submit the names of the same Worker for an overlapping time frame unless previously agreed to by the Customer.

**16. Non-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.
- 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.

**17. Warranty**

The Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor's employee (candidate) has made errors in completed work. Customer will immediately inform the Vendor of the Customer's determination. Vendor shall make corrections and revisions as necessary to provide the Customer with an acceptable Work Product 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.

**18. 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:

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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

**19. 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.