

Health & Human Services Commission

Purchase Order CHANGE ORDER

Dispatch via Print

Payment Terms Net 30	Freight Terms FOB Dest. Prepaid & All BEST WAY	Ship Via All BEST WAY	Purchase Order 52900-3-0000068577
If advertised by informal bid, Invitation for Offer, or Request for Proposal; all specifications, terms, and conditions set forth in the advertisement and vendor's conforming responses become a part of this numbered purchase order. Contractor guarantees goods or services delivered meet or exceed numbered purchase order requirements. All shipments, shipping papers, invoices, and correspondence must be identified with our Purchase Order Number.			Date 12/19/2012
			Revision 1 - 01/03/2013
			Page 1
			Ship To: Human Svcs Warehouse (HSW) Health & Human Services Commission 1111 W North Loop Austin TX 78756 United States
			Bill To: Health & Human Services Commission Mail Code: 3500 4900 N. Lamar Blvd, 5th Floor Austin TX 78751 United States

Vendor: 1541719551
 21ST CENTURY TECHNOLOGIES, INC. (21CT)
 6011 W COURTYARD DR STE 300
 C/O BLDG 5
 AUSTIN TX 78730-5113

Purchaser: Smith, Catherine Ann (ECP) 512/206-5540

Line-Sch	Inventory Item ID - Line Description	Class-Item	Quantity	UOM	PO Price	Extended Amt	Due Date
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In accordance with DIR-SDD-1863, attached Statement of Work, and Pricing and Payment schedule.

Term through December 2014.

Req No 2000110854

21CT offers graph pattern analysis technology, a highly advance and technologically effective method to track patterns and relationships among and between data points in disparate data sets. The LYNXeon technology from 21CT can digest unstructured data from multiple databases, normalize it and then run wide-ranging, unstructure queries on that data to identify information of investigative value. 21CT is capable of rapid installation and deployment of the pattern recognition software and supporting hardware, and can identify, integrate and implement a case management system that will serve to enhance OHG's overall effectiveness, while simultaneously supporting the LYNXeon deployment and implementation.

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Agency Contact - ads.porter@hhsc.state.tx.us
 Phone - 512-491-2520

Vendor Contact:
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 Irene Williams
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PO Bill To Information:
 Health & Human Services Commission
 Mail Code: 3500
 4900 N. Lamar Blvd, 5th Floor
 Austin, TX 78751
 (512) 424-6518
 Bill To Code: 3500

1- 1	LYNXeon Fraud System (statement of work and payment schedule are attached)	920-39	1.00	LOT	1,057,080.00000	1,057,080.00	12/31/2012
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Schedule Total 1,057,080.00

Contract ID: 52900-3-2000110854 Contract Line: 0 Release: 1545

Item Total for Line 1 1,057,080.00

2- 1	LYNXeon Fraud System (statement of work and payment schedule are attached)	920-39	1.00	LOT	10,632,047.00000	10,632,047.00	12/31/2012
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Schedule Total 10,632,047.00

Health & Human Services Commission

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Purchase Order 52900-3-0000068577		Date 12/19/2012
Revision 3 - 01/03/2013		Page 2
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Bill To: Health & Human Services Commission
Mail Code: 3500
4900 N. Lamar Blvd, 5th Floor
Austin TX 78751
United States

Purchaser: Smith, Catherine Ann (ECP) 512/206-5540

Line-Sch	Inventory Item ID - Line Description	Class-Item	Quantity	UOM	PO Price	Extended Amt	Due Date
Contract ID: 52900-3-2000110854		Contract Line: 0	Release: 1546				
		Item Total for Line	2			<u>10,639,047.00</u>	
3-1	LYNXeon Fraud System (statement of work and payment schedule are attached)	920-39	1.00	LOT	3,856,897.00000	3,856,897.00	12/31/2012
		Schedule Total				<u>3,856,897.00</u>	
Contract ID: 52900-3-2000110854		Contract Line: 0	Release: 3				
		Item Total for Line	3			<u>3,856,897.00</u>	
		Total PO Amount				<u>15,546,024.00</u>	

No substitutions or cancellations are permitted without prior approval by Health & Human Services Commission. If contractor fails to deliver by promised delivery date (or reasonable time thereafter) or fails to meet requirements, Health & Human Services Commission reserves the right to purchase elsewhere and charge an increased cost and handling to contractor.

Overshipments will not be accepted unless authorized by Buyer prior to shipment. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the Health & Human Services Commission and Contractor to attempt to resolve all disputes arising under the contract.



LYNXeon™ Graph Pattern Analysis Fraud Solution – Statement of Work

1 Background

The Office of the Inspector General (“OIG”) for the Texas Health and Human Services Commission (“HHSC”) has decided to implement a comprehensive fraud analytics and case management software system in support of its Fraud, Waste and Abuse reduction initiative. The backbone of this system is graph pattern analysis, as offered through 21CT’s LYNXeon software platform. This Statement of Work (“SOW”) identifies the deliverables for the graph pattern analysis fraud solution using LYNXeon.

The project is designed to modernize the entire OIG case processing system using analytics as the cornerstone of an investigative process. This investigative process complements the traditional reactive approach to complaint-based investigations with an active approach that identifies patterns of fraud and abuse before they become apparent. Although OIG will still accept and process investigations originating with complaints, OIG intends to dramatically expand its case identification methods with graph pattern analysis.

Phase 1: Initial Operating Capability (Months 1-4)

2 Initial Operability for the LYNXeon Fraud Analysis System

2.1 Business Analysis

21CT will conduct business analysis to identify data sources, requirements and success criteria as follows:

- a. Interview OIG investigators and OIG IT Staff to understand and document business needs.
- b. Review and identify data sources that will be used for Phase 1.
- c. Identify key OIG investigators and staff to work with 21CT.
- d. Scope the hardware requirements.
- e. Scope OIG server room requirements for hardware.
- f. Define success criteria for Phase 1.
- g. Develop high-level, written baseline that describes the customer’s requirements for Phase 1 of the project.

2.2 Hardware

The following hardware will be procured and deployed in Phase 1:

- a. Hardware for LYNXeon Enterprise Server Execution Environment
- b. Hardware for LYNXeon Graph Execution Environment
- c. Hardware for Analyst laptops

2.3 21CT Software Licenses

2.3.1 LYNXeon Enterprise Server Site License

21CT will offer a perpetual software site license allowing OIG to run unlimited instances of the LYNXeon Enterprise Server, the LYNXeon Fraud Accelerator Pack and the LYNXeon High Performance Data Adapter for Health Care Medicaid Fraud Investigations.

- a. OIG will provide the appropriate access and personnel to facilitate installation.
- b. 21CT will provide professional services for up to 6 server installs. These professional services will include installation, configuration, integration and schema development services.
- c. Additional site licenses for LYNXeon servers at HHSC beyond health care Medicaid fraud investigations may be contracted at an additional cost.

2.3.2 LYNXeon Analyst Studio Site License

LYNXeon Analyst Studio is the workstation tool that allows an investigator to access the LYNXeon Server. Using Link Explorer—a flexible and intuitive canvas—analysts can visually interact with the data. During Phase 1, 21CT will install LYNXeon Analyst Studio as follows:

- a. OIG will provide the appropriate access and personnel to facilitate installation.
- b. 21CT will install LYNXeon Analyst Studio on key investigator laptops as identified by OIG.

2.4 Data Integration

2.4.1 Data Integration of Identified Data Sources

- a. 21CT and OIG will agree upon data sources to integrate with LYNXeon.
- b. Data Access
 - i. OIG is responsible for providing access to data it owns.
 - ii. If OIG requires third-party data sources, OIG will be responsible for gaining access to data sources for OIG and 21CT's use.
- c. 21CT will integrate the identified data into the LYNXeon solution, upon access.

2.5 Investigation

2.5.1 Identify Cases of Potential Fraud

- a. 21CT will work with OIG investigators to use LYNXeon to identify cases involving indicia of fraud and suspicious activity.
- b. 21CT will work with OIG investigators to create reports using LYNXeon.

2.6 Technical Services Program Administration

21CT will provide the following program oversight:

- a. **Case Management System**
 - o Interview and collect requirements from HHSC/OIG for a case management system.
 - o Provide recommendation to OIG for meeting the case management requirements of the department, which may include improvements to the current system or replacement to be provided by a Subcontractor ("CMS Recommendation").
 - o Prepare and deliver to OIG a Statement of Work ("CMS SOW") to implement the CMS Recommendation.
- b. Prepare templates for monthly reporting to OIG and complete first report.

Phase 2: Enhanced Solution (Months 5-14)

3 Solution Integration

3.1 Business Analysis

21CT and OIG will identify additional data sources beyond those used in Phase I, and additional workflows and analytics using those data sources.

- a. Identify new data sources to ingest into LYNXeon.
- b. Identify analytics, rules and workflows to be developed in LYNXeon.
- c. Prepare Phase 2 Requirements Documentation based on the results of Phase 1, new data sources, and customer operational needs.

3.2 Analytics

21CT will create and/or deliver analytics, rules and queries, which are designed to look for certain behavior or patterns according to expert techniques, OIG practices and/or industry standards.

- a. As part of the LYNXeon solution, 21CT will deliver analytics, rules and queries to assist discovery of suspicious activities in the interrelated data.
- b. In addition to the analytics, rules and queries that 21CT will deliver as part of the LYNXeon solution, 21CT will work with OIG to develop new analytics, rules and queries throughout the project.
- c. These newly-developed analytics, rules and queries will attempt to codify the existing workflows of OIG investigators and other customized OIG requests that may occur on a case-by-case basis.

3.3 Data Integration

3.3.1 New Data Source Integration

- a. 21CT and OIG will agree upon data sources to integrate with LYNXeon.
- b. **Data Access**
 - i. OIG is responsible for providing access to data it owns.
 - ii. If OIG requires third-party data sources, OIG will be responsible for gaining access to data sources for OIG and 21CT use.

- d. LYNXeon will be integrated with data sources.
- e. 21CT expects that new data source integration work will be ongoing. As 21CT and OIG identify new sources of data that will enhance the overall solution, 21CT will scope this effort to integrate the new data and implement this integration as agreed upon with OIG.

4 Training

- a. Four (4) training classes will be provided for OIG investigators.
 - i. Classes are 2-days on-site at OIG facilities.
 - ii. Supports 15-20 analysts per training class.
 - iii. Investigator training classes provided at OIG will require:
 - a. Space for 15-20 investigator/analysts and 21CT trainers
 - b. Access to a projector
 - c. Individual laptops for trainees and access to LYNXeon Server
- b. Four (4) additional training courses will be provided upon request from OIG
- c. One (1) Administrator Training
 - i. Classes are 2-days on-site.
 - ii. Support 5-10 administrators.

5 Case Management System Improvements

If the CMS SOW is approved during Phase 1, 21CT will work with OIG to implement the tasks in that SOW throughout Phases 2 and 3.

6 Business Analysis and Integration for High Performance Data Warehouse

6.1 Business Analysis

- a. If deemed necessary for the project, interview and collect requirements from a subcontractor for a high performance data warehouse.
- b. Prepare and deliver to OIG a Statement of Work detailing the provision of a case management system from a selected Subcontractor.
- c. Upon OIG's approval of the Statement of Work, retain the Subcontractor, and finalize high-level project plans and contracts with Subcontractor.
- d. Conduct kick-off meeting with Subcontractor.

6.2 Hardware and Software

Upon approval of the SOW, 21CT will procure hardware and software as necessary for the Data Warehouse.

6.3 Integration

Upon approval of the SOW, 21CT and Data Warehouse vendor will integrate the Data Warehouse with LYNXeon.

6.4 Technical Services Program Integration

21CT will provide the following technical service program integration oversight:

- a. As necessary, and if the SOW is approved, retain a subcontractor to provide the high performance data warehouse.
- b. Lead and manage the initial project scoping with the Subcontractor for delivering the high performance data warehouse.
- c. Finalize high-level project plans with Subcontractor.
- d. Oversee Subcontractor's implementation, installation and deployment of the high performance data warehouse.
- e. Prepare templates for monthly reporting to OIG and complete first report.

Phase 3: Solution Integration with Other Technologies as Necessary and Ongoing Operability (Months 10-24)

7 LYNXeon Business Analysis and Integration with Entity Resolution Technology

7.1 Business Analysis

- a. If deemed necessary for the project, interview and collect requirements from a subcontractor for entity resolution technology.
- b. Prepare and deliver to OIG a Statement of Work ("Entity Resolution SOW") detailing the provision of entity resolution technology.
- c. Upon OIG's approval of the Entity Resolution SOW, retain the Subcontractor, and finalize high-level project plans and contracts with Subcontractor.
- d. Conduct kick-off meeting with Subcontractor.

7.2 Hardware and Software

If approved by OIG, 21CT will procure hardware and software for the Entity Resolution SOW.

7.3 Integration

21CT and Subcontractor will integrate the technology as outlined in the Entity Resolution SOW.

7.4 Technical Services Program Integration

21CT will manage overall solution and integration with subcontracted vendors.

8. Analytics Development, Solution Enhancements, Support and Ongoing Training

8.1 Analytics Development

21CT will work with OIG investigators to develop analytics, rules and queries for use by OIG fraud investigators. This is a continuation of the work in Phase 2.

- a. These newly-developed analytics, rules and queries will attempt to codify the existing workflows of OIG investigators and other customized OIG requests that may occur on a case-by-case basis.
- b. Analytics will be used to codify existing analysis and workflow of investigators.

8.2 Program Integration and Management

21CT will manage overall solution, subcontractors, and integration of technologies into and with OIG's environment.

Signed:



Irene M. Williams
Chief Executive Officer
21CT

21CT Pricing and Payment Schedule for the LYNXeon Fraud System:

1 Price

Total Project Price after DIR 20% discount		\$19,888,341
Total Project Price before DIR 20% discount		\$24,860,426
Total Includes following Components:		
LYNXeon Perpetual Software Solution Licenses for Medicaid Fraud		\$7,838,000
LYNXeon Server License		\$4,885,000
LYNXeon Analyst Studio License		\$312,500
LYNXeon Fraud Accelerator Pack License		\$1,445,851
LYNXeon High Performance Data Adapter		\$82,500
LYNXeon Access Manager		\$1,112,149
Software Maintenance and Support		\$2,335,200
1 st Year of Software Maintenance for 21CT Software		\$1,167,600
2 nd Year of Software Maintenance for All 21CT Software		\$1,167,600
Professional Services: Installation, Integration, Configuration, and Customized Rule Development		\$2,256,808
Professional Services for months 1-4		\$376,134
Professional Services for months 5-8		\$376,134
Professional Services for months 9-12		\$376,134
Professional Services for months 13-16		\$376,134
Professional Services for months 17-20		\$376,134
Professional Services for months 21-24		\$376,134
Hardware		\$506,250
LYNXeon Server Execution Environment	(3) @ \$22,500	\$67,500
Link Manager Execution Environment	(1) @ \$22,500	\$22,500
LYNXeon Link Storage Execution Environment	(1) @ \$22,500	\$22,500
Analyst Laptops	(150) @ \$2,625	\$393,750
Technical Services Program Administration		\$1,168,418
Training		\$228,750
Analyst Training - First Class		\$75,000
Analyst Training - Second Class		\$75,000
Administrator Training		\$78,750
Reserve for Software, Hardware and Technical Services Costs for Case Management System, and Integrated Technology for the Fraud Graph Analysis Solution		\$10,527,000

2 Payment Schedule

- 1.1 **Payments for all 21CT LYNXeon Perpetual Software Solution Licenses and 1st year of maintenance and support will be due upon installation of LYNXeon server and software at Customer site.**
- 1.2 **Payment for , 9. 8th ~~0th~~ 2nd year of maintenance and support will be due 12 months from initial LYNXeon server installation.**
- 1.3 **Payment for all Hardware is due upon the date of #4th procurement.**
- 1.4 **Payment for Fraud Analytic Professional Services is due on the first day of each 4-month segment, with the first payment due upon purchase order execution.**
- 1.5 **Payment for Training is due upon first day of each training session.**
- 1.6 **Payment for Technical Services Program Administration is due thirty (30) days from purchase order execution.**
- 1.7 **Payment for Reserve for Software, Hardware and Technical Services for Case Management System, and Integrated Technology will be due according to the separate Statement of Work terms for each solution component.**

3 Payment Methods

- 3.1 **All payments will be made fifteen (15) days from the date of invoice.**

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AUSTIN TX 78730-5113

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Health & Human Services Commission
4900 N Lamar Blvd
Austin TX 78751
United States
Phone: 512-424-6518
Fax: 512-424-6901
Email: HHSC_AP@hhsc.state.tx.us

Purchaser: Arbuckle, Deborah C (ECPS) 512/206-4733

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In accordance with DIR-SDD-1863, attached Statement of Work, and Pricing and Payment schedule.

Term through December 2014.

Req No 2000120508

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Agency Contract Manager: jennifer.stansbury@hhsc.state.tx.us
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Agency Contact - ada.porter@hhsc.state.tx.us
Phone - 512-491-2820

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4900 N. Lamar Blvd, 5th Floor
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1- 1	LYNXeon Fraud System (statement of work and payment schedule are attached)	1.00 EA	994,080.00000	994,080.00	10/01/2013
	204-29				

Schedule Total 994,080.00

Contract ID: 52900-3-2000110854

Contract Line: 0 Release: 4

Item Total for Line 1 994,080.00

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21ST CENTURY TECHNOLOGIES, INC. (21CT)
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C/O BLDG 6
AUSTIN TX 78730-5113

Purchaser: Arbuckle, Deborah C (ECPS)	512/206-4733
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Line-Sch	Inventory Item ID - Line Description	Class-Item	Quantity	UOM	PO Price	Extended Amt	Due Date
2-1	LYNXeon Fraud System (statement of work and payment schedule are attached)	204-29	1.00	EA	3,341,122.000000	3,341,122.00	10/01/2013

Schedule Total 3,341,122.00


Contract ID: 52900-3-2000110854 Contract Line: 0 Release: 5

Item Total for Line 2 3,341,122.00

Total PO Amount 4,335,202.00

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Authorized Signature




Statement of Work

LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations

Revision 1.0

July 2013

Prepared by:



Todd Spears, Program Manager

Approved by:



Irene Williams, Client Partner/CEO



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Statement of Work: LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations
Revision 1.0

REVISION HISTORY

Revision	Date	Description
0.0	Dec 2012	Original issue with signed purchase order
1.0	July 2013	Rebaseline tasks and deliverables to align with strategic changes following demos to Texas HHSC.



Statement of Work: LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations
Revision 1.0

1 BACKGROUND

The Office of the Inspector General (OIG) for the Texas Health and Human Services Commission (HHSC) has decided to implement an enterprise fraud analytics and case management software system in support of its Fraud, Waste, and Abuse reduction initiative. The backbone of this system is graph pattern analysis, as offered through 21CT's LYNXeon™ software platform. Complimenting LYNXeon will be a modernized case management system. This Statement of Work (SOW) identifies the tasks and deliverables for this fraud analytics and case management solution.

2 PROJECT OBJECTIVES

OIG's objectives for this project are:

- Faster and more efficient Medicaid investigations
- Improving the findings of suspicious activity in terms of [REDACTED]

3 PROJECT TASKS

This section defines the project tasks that 21CT will perform during this project. The deliverables associated with these tasks are summarized in Section 4.

3.1 Deliver LYNXeon Software for Medicaid Investigations

To improve OIG Medicaid fraud investigations, 21CT will provide a license to its LYNXeon software platform and new analyst computers.

3.1.1 LYNXeon Enterprise Server

21CT will provide a perpetual software license of LYNXeon Enterprise Server - version 2.26 and 3.0,- for the purpose of Medicaid Fraud Investigations, up to a data volume of 10TB.

- OIG will provide access and personnel to facilitate installation and configurations as required
- 21CT will provide a license to appropriate hardware for LYNXeon Enterprise Server Execution Environment (see Section 3.4)
- 21CT will provide professional services to install and configure the LYNXeon server hardware



Statement of Work: LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations
Revision 1.0

3.1.2 LYNXeon Analyst Studio

21CT will provide a perpetual software license of LYNXeon Analyst Studio version 2.26 for the purpose of Medicaid Fraud Investigations. LYNXeon Analyst Studio is the client workstation tool that allows an investigator to access LYNXeon Server 2.26.

- OIG will provide the access and personnel to facilitate installation and configuration as required
- 21CT will provide professional services to install and configure LYNXeon Analyst Studio



3.1.3 LYNXeon Maintenance and Support

21CT will provide two consecutive years of maintenance and support (M&S) for LYNXeon Enterprise Server and LYNXeon Analyst Studio (for the most current versions delivered to OIG) to cover the period of January 1, 2013-December 31, 2014. The LYNXeon Software License Agreement defines the terms for this M&S (see Appendix A: LYNXeon Software License Agreement).

3.1.4 Analyst Computers

21CT will procure and deliver 150 laptop computers for OIG investigators to run LYNXeon. OIG and 21CT will jointly specify the hardware and software for these systems.

3.2 Deliver Case Management System for Medicaid Investigations

To support faster and more efficient Medicaid investigations, 21CT will provide OIG a license to an enterprise case management system (CMS) for use by Medicaid Provider Integrity (MPI) investigators and staff.

3.2.1 Specify CMS Requirements

21CT will meet with OIG staff and management to understand and document the requirements for an MPI enterprise CMS. Specifically 21CT will capture requirements around the following capabilities.

- Case tracking
- Case management
- Document attachment



- Management reporting

3.2.2 Evaluate Commercial Products

21CT will perform market research to identify viable commercial software products that support enterprise case management. In particular, 21CT will identify advanced commercial case management platforms that can be efficiently configured, implemented, and maintained for OIG purposes. 21CT will perform technical and business due diligence to determine the full list of third party software products that best meet OIG's requirements.

3.2.3 Installation

21CT will obtain licenses to all specified third party software to support the enterprise case management system. The software will be installed on the hardware provisioned for the CMS, as described in Task 3.4

3.2.4 Configuration and Integration

21CT will configure the case management platform and other software components defined in Task 3.2.2, to satisfy the requirements for an MPI enterprise CMS as defined in Task 3.2.1. Configuration will include the creation of MPI-specific user interfaces, dashboard, workflows, and reports. In addition, 21CT will integrate the configured CMS with LYNXeon, according to the plan defined in Task 3.2.2.

3.3 Technical Support Services

3.3.1 Identify and Evaluate Potential Data Sources

21CT and OIG will work together to identify third party data sources with potential analytical value for detecting fraud using LYNXeon. 21CT and OIG will work with the data providers to obtain data samples for technical evaluation by 21CT. Potential data sources include but are not limited to:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



Statement of Work: LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations
Revision 1.0

Based on the technical evaluation of sample data, 21CT will identify the third party data sources to obtain for the project. 21CT and OIG will work together to develop and implement a plan and appropriate business structures for obtaining the data.

3.3.2 Data Curation

21CT will develop, implement, and maintain a data curation process for the receipt, storage, and handling of all third party data obtained under Task 3.3.1. This process will define procedures for the following:

- Receipt and cataloging
- Storage and security
- Evaluation
- Cleaning
- Transformation
- Loading

This process shall comply with all HIPAA regulations and other federal and state standards, as applicable.

3.3.3

[REDACTED]

3.4 Data Storage and Application Hosting Solutions

3.4.1 Define Requirements

21CT will define the hardware, software, and technical service requirements for data storage and application hosting for OIG's use of the LYNXeon system and CMS on this project.

3.4.2 Evaluate Commercial Products

21CT will identify viable commercial data storage and application hosting solutions. 21CT will perform a technical and business evaluation of selected products and vendors to determine which solution will best satisfy the requirements defined in Task 3.4.1. At the conclusion of this task, 21CT will produce a plan and specification for provisioning the appropriate hardware, software, and services for each solution.



Statement of Work: LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations
Revision 1.0

3.4.3 Installation and Production

21CT will provision, install, integrate, and configure the hardware and software specified in Task 3.4.2. [REDACTED]

3.5 Program Management and Other Technical Services

As part of the development and delivery of multiple technology solutions for OIG, 21CT will perform the following technical and program management services.

- Develop and document a concept of operations (CONOPS) around the implementation, deployment, and use of these solutions by OIG investigators and management
- Develop and document a system architecture that describes the constituent components of the various solutions and their relationship and/or interface
- Develop and maintain a detailed project plan that identifies tasks, milestones and deliverables from this SOW
- Develop, document and enforce processes for information security and compliance with appropriate regulations and standards (e.g., HIPAA)
- Quarterly program progress reports to OIG
- Management oversight of all third party vendors and subcontractors utilized in the specification, development, implementation, integration or testing of technologies supporting 21CT solutions

3.6 Training

21CT will provide the following training to OIG personnel

3.6.1 LYNXeon

21CT will provide the following training for use of the LYNXeon system by OIG investigators.

- Four (4) training classes will be provided for OIG investigators and management
 - Classes are 2-days on-site at OIG facilities
 - Supports 15-20 analysts per training class
- Four (4) additional training courses will be provided upon request from OIG
- One (1) Administrator Training
 - Classes are 2-days on-site
 - Support 5-10 administrators

For each class, OIG shall provide the following:

- Space sufficient for the specified class size plus 21CT trainers
- Access to a projector
- Individual laptops for trainees
- Internet access



3.6.2 Case Management System

21CT will provide the following training for use of the CMS by OIG personnel.

- Four (4) training classes will be provided for OIG investigators and management
 - Classes are 2-days on-site at OIG facilities
 - Supports 15-20 people per training class
- Four (4) additional training courses will be provided upon request from OIG
- One (1) Administrator Training
 - Classes are 2-days on-site
 - Support 5-10 administrators

For each class, OIG shall provide the following:

- Space sufficient for the specified class size plus 21CT trainers
- Access to a projector
- Individual laptops for trainees
- Internet access



Statement of Work: LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations
Revision 1.0

4 DELIVERABLES

The following table defines the deliverables associated with the tasks described in Section 3. All deliverables will be delivered to the designated OIG Program Manager unless otherwise directed.

ID	Description	Task ID	Delivery Date	Comments
Task 3.1-Deliver LYNXeon Software for Medicaid Investigations				
D1	LYNXeon 3.0 Progress Demonstrations	3.1.1	1x per quarter, starting April 2013	
D2	License for 10TB LYNXeon Enterprise Server, versions 2.26 and 3.0, including: <ul style="list-style-type: none"> • CD with executable • License agreement • User Manual 	3.1.1	Version 2.26 – Jan 31, 2013 Version 3.0 - TBD, no later than September 2014	Perpetual license for specified versions M&S through December 2014
D3	License for LYNXeon Analyst Studio, version 2.26, including: <ul style="list-style-type: none"> • CD with executable • License agreement • User Manual 	3.1.1	Jan 31, 2013	Perpetual license for specified version M&S through December 2014
D4	OIG Analyst Computers	3.1.4	TBD, no later than December 2014	
Task 3.2-Deliver Case Management System for Medicaid Investigations				
D5	Project Charter for MPI CMS	3.2.1	June 30, 2013	
D6	Business Requirements Specification for MPI CMS	3.2.1	July 31, 2013	
D7	Functional Requirements Specification for MPI CMS	3.2.1	November 31, 2013	
D8	License for MPI Case Management System, including: <ul style="list-style-type: none"> • CD with executable • License agreement • User Manual 	3.2.3	TBD, no later than September 2014	Perpetual license M&S through December 2014



Statement of Work: LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations
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ID	Description	Task ID	Delivery Date	Comments
Task 3.3-Technical Support Services				
D9	Licenses for Commercial Data	3.3.1	December 30, 2013	License for use through December 2014
D10	Data Curation Plan	3.3.2	August 31, 2013	
D11	[REDACTED]	3.3.3	[REDACTED]	
Task 3.4-Data Storage and Application Hosting Solutions				
D12	Licenses for hardware in support of data storage or application hosting solution	3.4.3	See D2, D3, and D8	License for use through December 2014
D13	Licenses for software in support of data storage or application hosting solution	3.4.3	See D2, D3, and D8	Perpetual license M&S through December 2014
Task 3.5-Program Management				
D14	ConOps Description	3.5	September 30, 2013	
D15	System Architecture Description	3.5	September 30, 2013	
D16	Security & Compliance Procedures	3.5	September 30, 2013	
D17	Program Progress Reports	3.5	1x per quarter, starting July 2013	
Task 3.6-Training				
D18	LYNXeon Training Class	3.6.1	No later than Oct 2014	
D19	CMS Training Class	3.6.2	No later than Oct 2014	

21CT PROPRIETARY



Statement of Work: LYNXeon Fraud Solution for HHSC OIG Medicaid Investigations
Revision 1.0

5 APPENDIX A: LYNXEON SOFTWARE LICENSE AGREEMENT

LYNKEON Fraud Solution for HHSC DIG Medicaid Investigations
 Payment Schedule
 Revision 4.0
 8/29/2013

Date	Description	SPV 13 Payment Schedule												Total		
		15 days or PO Execution	31-Jan-13	28-Feb-13	31-Mar-13	30-Apr-13	31-May-13	31-Aug-13	30-Sep-13	31-Jan-14	31-May-14	31-Aug-14	Before ITS Discount		Less 20% ITS Discount	
3.1.1 - 3.1.2	LYNKEON License for Medicaid Investigations (Emergency Services & Support Studies)	\$ 1,587,600	\$ 3,135,200	\$ 3,135,200	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,838,000	\$ 6,270,400
3.1.3	LYNKEON License for Medicaid Investigations (Emergency Services & Support Studies)	\$ 235,520	\$ 467,040	\$ 467,040	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,167,600	\$ 934,080
3.1.4	LYNKEON Maintenance & Support - Year 2	\$ -	\$ -	\$ 7,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 596,250	\$ 465,000
3.2.1 - 3.2.4	License for MPI Case Management System	\$ 736,500	\$ 736,500	\$ 736,500	\$ 922,500	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 4,875,000	\$ 3,900,000
3.3.1	License for Commercial Data	\$ 163,063	\$ 216,509	\$ 447,458	\$ 1,821,447	\$ 183,285	\$ 641,726	\$ -	\$ 100,000	\$ 147,467	\$ 315,992	\$ 89,455	\$ -	\$ -	\$ 1,375,000	\$ 1,100,000
3.3.2 - 3.3.3	Technical Support Services for LYNKEON Investigations	\$ -	\$ -	\$ -	\$ 625,000	\$ -	\$ -	\$ -	\$ -	\$ 312,500	\$ 312,500	\$ 106,220	\$ -	\$ -	\$ 1,875,000	\$ 1,500,000
3.4.1 - 3.4.3	License for Data Storage & Application Hosting	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 106,220	\$ 1,164,418	\$ 944,734
3.5.1 - 3.5.2	Training	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 228,750	\$ 183,000
	Subtotal	\$ 2,820,903	\$ 4,679,469	\$ 5,013,818	\$ 3,882,467	\$ 1,555,017	\$ 568,620	\$ 923,946	\$ 1,788,577	\$ 656,187	\$ 790,960	\$ 290,960	\$ -	\$ -	\$ 24,860,422	\$ 19,880,376
	Less 20% ITS Discount	\$ (564,181)	\$ (865,084)	\$ (1,002,784)	\$ (776,533)	\$ (311,003)	\$ (113,808)	\$ (184,790)	\$ (350,315)	\$ (133,257)	\$ (133,257)	\$ (58,028)	\$ -	\$ -	\$ (4,972,084)	\$ (3,988,288)
	Cumulative (before ITS discount)	\$ 2,256,722	\$ 3,814,385	\$ 4,011,034	\$ 3,105,934	\$ 1,244,014	\$ 854,812	\$ 739,156	\$ 1,438,262	\$ 522,930	\$ 657,703	\$ 232,932	\$ -	\$ -	\$ 20,888,338	\$ 15,892,088
	Cumulative (less 20% ITS discount)	\$ 1,692,541	\$ 2,949,301	\$ 3,008,250	\$ 2,329,401	\$ 933,011	\$ 740,994	\$ 554,366	\$ 1,087,947	\$ 389,673	\$ 524,446	\$ 174,904	\$ -	\$ -	\$ 15,916,254	\$ 11,903,800

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21CT, Inc. dba 21st Century Technologies

URL [Vendor Website](#)
Vendor ID 1541719551600
HUB Type Hispanic/Female

DIR Contract Number DIR-SDD-1863
Contract Term End Date 5/16/2014
Contract Exp Date 5/16/2016

21CT, Inc. dba 21st Century Technologies

Contact [Stephanie Freund](#)
Phone (512) 682-4716
Fax 512-342-0196

DIR
Contact [Phyllis Beutler](#)
Phone (512) 463-4854
Fax (512) 475-4759

How to Order

1. For product and pricing information, visit the [21CT, Inc. dba 21st Century Technologies website](#) or contact [Stephanie Freund](#) at (512) 682-4716.
2. Generate a purchase order, made payable to 21CT, Inc. dba 21st Century Technologies. You must reference the DIR Contract Number **DIR-SDD-1863** on your purchase order.
3. E-mail or Fax your purchase order and quote form to your designated vendor sales representative.

Contract Overview

[Get Adobe Reader](#)

Contract: [DIR-SDD-1863](#)

Standard Terms and Conditions PDF - 427 KB

This appendix contains the standard DIR Terms and Conditions for the contract as of the date identified. Any initial exceptions to these Terms will be contained in the original contract. All subsequent changes or updates to the Terms and Conditions will be reflected in contract amendments.

HUB Subcontracting Plan (HSP) PDF - 295 KB | Updated 05/21/2012

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. The HSP identifies all authorized resellers and/or all subcontractors performing services.

Pricing PDF - 174 KB | Updated 05/21/2012

Pricing for available products and/or services under this contract are limited to those identified in the appendix.

Electronic and Information Resources (EIR) Accessibility

Information regarding Electronic and Information Resources (EIR) accessibility of this vendor's offerings is included in the contract. Agencies purchasing products or services are responsible for complying with Texas EIR Accessibility statute and rules, as defined in TGC 2054 Subchapter M, ITAC 206, and 1 TAC 213. For additional information, visit the Vendor Website or contact the vendor directly.

Available Brands

LYNXeon

Available Products & Services

IT Security Software
Security Services

Additional Contract Information

[Amendment 1 \(103 KB\)](#)

[No thanks, return to search](#)

Reseller Vendor Contacts

There are no resellers associated with this contract.

[Capital Choices Directory](#)
[Statute Search](#)
[Spending Sites](#)
[Banned Procurement Schedules](#)

[Department Library](#)
[S&O Fraud Reporting](#)
[Information Security](#)
[Texas Veterans Portal](#)

[FAQs](#)
[Site Notices](#)
[Site Map](#)
[Job Postings](#)

Dept. of Information Resources
300 W. 13th St. Ste. 1200
Austin, TX 78701 **MSB**
(512) 475-4700

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STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
21CT Inc. DBA 21st CENTURY TECHNOLOGIES, INC.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and 21CT Inc., dba 21st Century Technologies, Inc. (hereinafter "Vendor"), with its principal place of business at 6011 West Courtyard Drive, Suite 300 Austin, Texas 78730.

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-171, on September 29, 2011, for Information Technology Security (ITS) Hardware, Software and Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-171 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-171, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-171, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

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

3. Product and Service Offerings

A. Products

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

B. Services

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

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

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

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index. Customer Discount includes the DIR administrative Fee specified in Section 5.

C. Customer Price

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

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

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

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

D. DIR Administrative Fee

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

E. Shipping and Handling Fees

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

F. Tax-Exempt

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

G. Travel Expense Reimbursement

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

H. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one half of one percent (.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

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

If sent to the State:

Manager
Contracts and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759

If sent to the Vendor:

Stephanie Freund
21st Century Technologies, Inc.
6011 West Courtyard Drive, Suite 300
Austin, Texas 78730
Phone: (512) 682-4716
Facsimile: (512) 682-4743
Email: sfreund@21technologies.com

7. Software License Agreements

A. Shrink/Click-wrap License Agreements

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

8. Intellectual Property Matters

A. Definitions

1. "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

Vendor Contract No. _____

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 thru Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to

Vendor Contract No. _____

Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product, shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and

Vendor Contract No. _____

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.

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.

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

No exceptions have been agreed to by DIR and Vendor.

(This space intentionally left blank)

DIR Contract No. DIR-SDD-1863

Vendor Contract No. _____

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

21CT Inc., dba 21st Century Technologies, Inc.

Authorized By: _____

Name: _____

Title: _____

Date: _____

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

Authorized By: _____

Name: Carl Marsh

Title: Chief Operating Officer

Date: _____

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Standard Terms and Conditions For Product and Related Services Contracts

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

1. Contract Scope

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

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

3. Definitions

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

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

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- B. Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

4. General Provisions

A. Entire Agreement

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

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

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

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

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.

5. Product Terms and Conditions

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

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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).

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

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.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 this Subsection 5.B.

6. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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

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B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfller information: Order Fulfller name, Order Fulfller business address, Order Fulfller CPA Identification Number, Order Fulfller contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Fulfller participation or request that Vendor name additional Order Fulfllers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfllers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfllers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfllers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfllers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Fulfller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfller List

Vendor may add or delete Order Fulfllers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfllers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfller information listed in Section 6.B.1.a above.

3) Order Fulfller Pricing to Customer

Order Fulfller pricing to the Customer shall comply with the Customer price as stated within Section 4 of the Contract. This pricing shall only be offered by Order Fulfllers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

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

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D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Website

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the product and services offered, product and service specifications, Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. 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 F of this Section, and contain a link to the DIR website for the Contract.

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 in 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

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passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

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

G. Vendor and Order Fulfiller Logo

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

H. Trade Show Participation

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

I. Orientation Meeting

Upon thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting 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 or Order Fulfillers for attendance at the meeting.

J. 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

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the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

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

7. Purchase Orders, Invoices, and Payments

A. Purchase Orders

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

B. Invoices

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

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

C. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) 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.

8. 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 product pricing and monthly reports submitted by Vendor.

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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 a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

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

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract 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 ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) 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, manufacturer's suggested retail price, 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.

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 Administrative Fee

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

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

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

c) 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 and/or Order Fulfiller 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 or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of 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: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, 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

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request.

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 Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

1) 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 specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR ICT Cooperative Contracts E-Mail Box information.

9. Vendor Responsibilities

A. Indemnification

1) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or

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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 AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

2) 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.

3) 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.

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

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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 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

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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) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (ix) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (x) 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 have disclosed them to DIR and have disclosed or do 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 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) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate; and
- (xiv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

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

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.

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 Certification Statement of Appendix A to the RFO and/or Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract

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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 and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

K. Limitation of Liability

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.

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L. 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.

M. 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.

N. 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
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

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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.

O. 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.

P. 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.

Q. Public Disclosure

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

R. Product and/or Services Substitutions

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

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S. Secure Erasure of Hard Disk Products and/or Services

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

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.

U. 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.

10. Contract Enforcement

A. Enforcement of Contract and Dispute Resolution

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

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

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B. Termination

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

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 11.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

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(30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

4) Termination for Cause

a) Contract

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

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order 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 10.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

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 Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war,

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

11. Notification

A. Notices

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

B. Handling of Written Complaints

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

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

12. 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.

