



Amendment No. 2
to
Contract No. MA 5200 NC210000067
For
Splunk Licenses
between
CDW LLC D/B/A Sirius Computer Solutions
and the
City of Austin, Texas

- 1.0 The Contract is hereby amended to increase the contract amount by \$479,000 to cover Payment 1 of the attached quote for subscription services for Splunk Cloud Software. City of Austin acknowledges and anticipates Payments 2 to 4 to be covered by a future contract.
- 2.0 In addition, this amendment incorporates the negotiated Splunk General Terms (August 2021) as attached.
- 3.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

DocuSigned by:
Justin Sobey
DBA9290798514DC...

6/7/2022 | 13:35 CDT

Justin Sobey

Printed Name: _____
Authorized Representative
CDW LLC D/B/A Sirius Computer Solutions

Signature & Date:

Brett D. Hardy

Digitally signed by Brett D. Hardy
Date: 2022.06.13 10:02:28 -05'00'

Brett Hardy, Procurement Supervisor
City of Austin



SPLUNK GENERAL TERMS

These General Terms ("**General Terms**") apply to the purchase of licenses and subscriptions for Splunk's Offerings.

See the General Terms Definitions Exhibit attached for definitions of capitalized terms not defined herein.

If you are a United States state or local government entity, including a public institute of higher education, see the UNITED STATES STATE & LOCAL GOVERNMENT LAW EXHIBIT TO SPLUNK GENERAL TERMS attached which supersedes terms found elsewhere in the General Terms.

Parties:

Splunk or "**we**" or "**us**" or "**our**": Splunk Inc., a Delaware corporation, with its principal place of business at 270 Brannan Street, San Francisco, California 94107, U.S.A.; and

Customer or "**you**" or "**your**": City of Austin, with its principal place of business at 5010 Old Manor Rd Ste 330, Austin, TX, United States, 78723.

IN WITNESS WHEREOF, the parties have executed these Splunk General Terms by their duly authorized officers or representatives.

SPLUNK:

Signature:

Name:

Title:

Date:

City of Austin:

Signature: Brett D. Hardy

Digitally signed by Brett D. Hardy
Date: 2022.06.28 10:25:43 -05'00'

Name: Brett Hardy

Title: Procurement Supervisor

Date: June 28, 2022

"Effective Date" means the date of the last signature above.

GENERAL TERMS

1. License Rights

- (A) **General Rights.** You have the nonexclusive, worldwide, nontransferable and nonsublicensable right, subject to payment of applicable Fees and compliance with the terms of these General Terms, to use your Purchased Offerings for your Internal Business Purposes during the Term and up to the Capacity purchased.
- (B) **Copies for On-Premises Products.** You have the right to make a reasonable number of copies of On-Premises Products for archival and back-up purposes.
- (C) **Splunk Extensions.** You may use Splunk Extensions solely in connection with the applicable Purchased Offering subject to the same terms and conditions for that Offering (including with respect to Term) and payment of any Fees associated with the Splunk Extensions. Some Splunk Extensions may be made available under license terms that provide broader rights than the license rights you have to the applicable underlying Offering (e.g., if the Extension is Open Source Software). These broader rights will apply to that Splunk Extension. Splunk Extensions may be installed on Hosted Services pursuant to our instructions.
- (D) **Trials, Evaluations, Beta and Free Licenses.**
- (i) **Trials and Evaluations.** Offerings provided for trials and evaluations are provided at no charge, and their use will be for a limited duration.
 - (ii) **Beta Licenses.** Some Offerings and features may be available to you as a preview, or as an alpha, beta or other pre-release version (each, a “**Beta Offering**”). All rights for Beta Offerings are solely for internal testing and evaluation. Your use of a Beta Offering will be for the term specified by us, and if no term is specified, then for the earlier of one year from the start date of the Beta Offering or when that version of the Beta Offering becomes generally available. We may discontinue the Beta Offering at any time and may decide not to make any of the features and functionality generally available.
 - (iii) **Free Licenses.** From time to time, we may make certain Offerings available for full use (i.e., not subject to limited evaluation purposes) at no charge. These free Offerings may have limited features, functions, and other technical limitations.
 - (iv) **Donated Offerings.** Donated Offerings are free limited Offerings donated to qualifying Nonprofits under a Splunk donation program. By procuring and making use of a Donated Offering, you hereby represent and warrant that you are a lawfully organized Nonprofit, and you agree to provide verification of your nonprofit status to Splunk upon request. At Splunk’s request, you agree: (a) to publish a press release and case study on your use of the Donated Offering; and (b) to be interviewed for the production of a Splunk customer video that will accompany the press release and case study. Splunk will draft and edit all content in collaboration with you and will obtain your edits and written approval (email is sufficient) prior to publication, and such approval will not be unreasonably withheld. You will allow Splunk to reference your Nonprofit and leading spokespeople in press releases with your written approval (email is sufficient). Splunk may use your name and logo on sales presentations, websites, and other marketing collateral without your prior approval.
- (E) **Test and Development Licenses.** For Offerings identified as “**Test and Development**” Offerings on your Order, you only have the right to use those Offerings up to the applicable Capacity on a non-production system for non-production uses, including product migration testing or pre-production staging, or testing new data sources, types, or use cases. Test and Development Offerings may not be used for any revenue generation, commercial activity, or other productive business or purpose.
- (F) **Limitations.** Notwithstanding anything to the contrary in these General Terms, we do not provide maintenance and support, warranties, service level commitments, or indemnification for Test and Development Offerings, trials, evaluations, or free or Beta Offerings.

2. Purchasing Through Authorized Resellers, Digital Marketplaces, and Splunk Affiliates

- (A) **Authorized Resellers and Digital Marketplaces.** If you purchase Offerings through a Splunk authorized reseller or Digital Marketplace, these General Terms will govern those Offerings. Your payment obligations for the Purchased Offerings will be with the authorized reseller or Digital Marketplace, as applicable, not Splunk. You will have no direct Fee payment obligations to Splunk for those Offerings. However, in the event that you fail to pay the Digital Marketplace for your Purchased Offerings, Splunk retains the right to enforce your payment obligations and collect directly from you.

Any terms agreed to between you and the authorized reseller that are in addition to these General Terms are solely between you and the authorized reseller and Digital Marketplace, as applicable. No agreement between you and an authorized reseller or Digital Marketplace is binding on Splunk or will have any force or effect with respect to the rights in, or the operation, use or provision of, the Offerings.

- (B) **Splunk Affiliate Distributors.** Splunk has appointed certain Splunk Affiliates as its non-exclusive distributors of the Offerings (each, a “**Splunk Affiliate Distributor**”). Each Splunk Affiliate Distributor is authorized by Splunk to negotiate and enter into Orders with Customers. Where a purchase from Splunk is offered by a Splunk Affiliate Distributor, Customer will issue Orders, and make payments, to the Splunk Affiliate Distributor which issued the quote for the Offering. Each Order will be deemed a separate contract between Customer and the relevant Splunk Affiliate Distributor and will be subject to these General Terms. For the avoidance of doubt, Customer agrees that: (i) the total liability of Splunk under these General Terms as set forth in Section 22 (Limitation of Liability) states the overall combined liability of Splunk and Splunk Affiliate Distributors; (ii) the entering into Orders by a Splunk Affiliate Distributor will not be deemed to expand Splunk and its Affiliates’ overall responsibilities or liability under these General Terms; and (iii) Customer will have no right to recover more than once from the same event.

3. Your Contractors and Third-Party Providers

You may permit your authorized consultants, contractors, and agents (“**Third-Party Providers**”) to access and use your Purchased Offerings, but only on your behalf in connection with providing services to you, and subject to the terms and conditions of these General Terms. Any access or use by a Third-Party Provider will be subject to the same limitations and restrictions that apply to you under these General Terms, and you will be responsible for any Third-Party Provider’s actions relating to their use of the Offering. The aggregate use by you and all of your Third-Party Providers must not exceed the Capacity purchased, and nothing in this Section is intended to or will be deemed to increase such Capacity.

4. Hosted Services and Specific Offering Terms

- (A) **Service Levels.** When you purchase Hosted Services as a Purchased Offering, we will make the applicable Hosted Services available to you during the Term in accordance with these General Terms. The Service Level Schedules (as identified in the Specific Offering Terms referenced in Section 4(F) below) and associated remedies will apply to the availability and uptime of the applicable Hosted Service. If applicable, service credits will be available for downtime in accordance with the Service Level Schedule
- (B) **Connections.** You are responsible for obtaining and maintaining all telecommunications, broadband and computer equipment and services needed to access and use Hosted Services, and for paying all associated charges.
- (C) **Your Responsibility for Data Protection.** You are responsible for: (i) selecting from the security configurations and security options made available by Splunk in connection with a Hosted Service; (ii) taking additional measures outside of the Hosted Service to the extent the Hosted Service Offering does not provide the controls that may be required or desired by you; and (iii) routine archiving and backing up of Customer Content. You agree to notify Splunk promptly if you believe that an unauthorized third party may be using your accounts or if your account information is lost or stolen.
- (D) **Refund Upon Termination for Splunk’s Breach.** If a Hosted Service is terminated by you for Splunk’s uncured material breach in accordance with these General Terms, Splunk will refund you any prepaid subscription fees covering the remainder of the Term after the effective date of termination.
- (E) **Return of Customer Content.** Customer Content may be retrieved by you and removed from the Hosted Services in accordance with the applicable Documentation. We will make the Customer Content available on the Hosted Services for thirty (30) days after termination of a subscription for your retrieval. After that thirty (30) day period, we will have no obligation to maintain the storage of your Customer Content, and you hereby authorize us thereafter to, and we will, unless legally prohibited, delete all remaining Customer Content. If you require assistance in connection with migration of your Customer Content, depending on the nature of the request, we may require a mutually agreed upon fee for assistance.
- (F) **Specific Offering Terms.** Specific security controls and certifications, data policies, service descriptions, Service Level Schedules and other terms specific to a Hosted Service and other Offerings (“**Specific Offering Terms**”) are set forth here: www.splunk.com/SpecificTerms, and will apply, and be deemed incorporated herein by reference.

5. Support and Maintenance

The specific Support Program included with a Purchased Offering will be identified in the applicable Order. Splunk will provide the purchased level of support and maintenance services in accordance with the terms of the Support Exhibit attached to these General Terms.

6. Configuration and Implementation Services

Splunk offers standard services to implement and configure your Purchased Offerings. These services are purchased under an Order and are subject to the payment of the Fees therein and the terms of the Configuration and Implementation Services Exhibit attached to these General Terms.

7. Data Protection for Personal Data

Splunk will follow globally recognized data protection principles and industry-leading standards for the security of personal data. Splunk will comply with the requirements and obligations set forth in Splunk's Data Protection Addendum ("DPA"), located at https://www.splunk.com/en_us/legal/splunk-dpa.html, which includes standard terms for the processing of personal data (including, as applicable, personal data in a Hosted Service).

8. Security

- (A) **Security for Hosted Services: Standard Environment.** Splunk will implement industry leading security safeguards for the protection of Customer Confidential Information, including Customer Content transferred to and stored within the Hosted Services. These safeguards include commercially reasonable administrative, technical, and organizational measures to protect Customer Content against destruction, loss, alteration, unauthorized disclosure, or unauthorized access, including such things as information security policies and procedures, security awareness training, threat and vulnerability management, incident response and breach notification, and vendor risk management. Splunk's technical safeguards are further described in the Splunk Cloud Platform Security Addendum ("SC-SA"), located at https://www.splunk.com/en_us/legal/splunk-cloud-security-addendum.html, and the Observability Suite Security Addendum ("OS-SA"), located at https://www.splunk.com/en_us/legal/splunk-observability-security-addendum.html, as applicable, and are incorporated herein by reference.
- (B) **Security for Hosted Services: Premium HIPAA Environment.** For Hosted Services Offerings provisioned in Splunk Cloud Platform's Premium HIPAA environment (as specified in an Order), in addition to the protections under the SC-SA and these General Terms, Splunk will comply with the requirements and obligations set forth in Splunk Business Associate Agreement found here: https://www.splunk.com/en_us/legal/splunk-baa.html.
- (C) **Additional Security for Other Hosted Services.** From time to time, Splunk may offer custom security safeguards for unique Hosted Services offerings. Any such security safeguards will be as set forth in the applicable Documentation and Specific Offering Terms.
- (D) **Security for On Premises Offerings.** Splunk will implement industry leading security safeguards for the protection of Splunk's IT systems, products, facilities and assets, and any Customer Confidential Information accessed or processed therein, e.g., customer account information, support tickets ("**Corporate Security Controls**"). Splunk's Corporate Security Controls include such things as information security policies and procedures, security awareness training, physical and environmental access controls, threat and vulnerability management, incident response and breach notification, and vendor risk management. Splunk's Corporate Security Controls are further described in Splunk's Information Security Addendum ("ISA"), located at https://www.splunk.com/en_us/legal/information-security-addendum.html and are incorporated herein by reference.
- (E) **Product Development Security.** Splunk will follow secure software development practices and applies an industry standard, risk-based approach to its software development lifecycle ("SDLC"), which includes, as applicable, such things as performing security architecture reviews, open source security scans, virus detection, dynamic application security testing, network vulnerability scans and external penetration testing in the development environment. Product-specific information about the SDLC in our Offerings is detailed more fully in the ISA. Splunk's Product Security Portal, located at https://www.splunk.com/en_us/product-security.html, contains detailed information about Splunk's program for managing and communicating product vulnerabilities. Splunk categorizes product vulnerabilities in accordance with the Common Vulnerability Scoring System ("Medium," "High," or "Critical") and uses commercially reasonable efforts to remediate vulnerabilities depending on their severity level in accordance with industry standards.

- (F) **Maintaining Protections.** Notwithstanding anything to contrary in these General Terms, or any policy or terms referenced herein via hyperlink (or any update thereto), Splunk may not, during a Term materially diminish the security protections set forth in these General Terms, any Specific Offering Terms, or the applicable security addendum.

9. Use Restrictions

Except as expressly permitted in an Order, these General Terms or our Documentation, you agree not to (nor allow any user or Third Party Provider to): (a) reverse engineer (except to the extent specifically permitted by statutory law), decompile, disassemble or otherwise attempt to discover source code or underlying structures, ideas or algorithms of any Offering; (b) modify, translate or create derivative works based on the Offerings; (c) use an Offering for service bureau purposes, or for any purpose other than your own Internal Business Purposes; (d) resell, transfer or distribute any Offering; (e) access or use any Offering in order to monitor its availability, performance, or functionality for competitive purposes; (f) attempt to disable or circumvent any license key or other technological mechanisms or measures intended to prevent, limit or control use or copying of, or access to, Offerings; (g) separately use any of the applicable features and functionalities of the Offerings with external applications or code not furnished by Splunk or any data not processed by the Offering; (h) exceed the Capacity purchased or (i) use any Offering in violation of all applicable laws and regulations (including but not limited to any applicable privacy and intellectual property laws).

10. Our Ethics, Compliance and Corporate Responsibility

- (A) **Ethics and Corporate Responsibility.** Splunk is committed to acting ethically and in compliance with applicable law, and we have policies and guidelines in place to provide awareness of, and compliance with, the laws and regulations that apply to our business globally. We are committed to ethical business conduct, and we use diligent efforts to perform in accordance with the highest global ethical principles, as described in the Splunk Code of Conduct and Ethics found here: <https://investors.splunk.com/code-business-conduct-and-ethics-1>.
- (B) **Anti-Corruption.** We implement and maintain programs for compliance with applicable anti-corruption and anti-bribery laws. Splunk policy prohibits the offering or soliciting of any illegal or improper bribe, kickback, payment, gift, or thing of value to or from any of your employees or agents in connection with these General Terms. If we learn of any violation of the above, we will use reasonable efforts to promptly notify you at the main contact address provided by you to Splunk.
- (C) **Export.** We certify that Splunk is not on any of the relevant U.S. or EU government lists of prohibited persons, including the Treasury Department's List of Specially Designated Nationals and the Commerce Department's List of Denied Persons or Entity List. Export information regarding our Offerings, including our export control classifications for our Offerings, is found here: https://www.splunk.com/en_us/legal/export-controls.html.

11. Usage Data

From time to time, Splunk may collect Usage Data generated as a by-product of your use of Offerings (e.g., technical information about your operating environment and sessions, systems architecture, page loads and views, product versions, number and type of searches, number of users, source type and format). Usage Data does not include Customer Content. We collect Usage Data for a variety of reasons, such as to identify, understand, and anticipate performance issues and the factors that affect them, to provide updates and personalized experiences to customers, and to improve the Splunk Offerings. Details on Splunk's Usage Data collection practices are set forth in Splunk's Privacy Policy found here: https://www.splunk.com/en_us/legal/privacy/privacy-policy.html.

12. Capacity and Usage Verification

- (A) **Certification and Verification.** At Splunk's request, you will furnish Splunk a certification signed by your authorized representative verifying that your use of the Purchased Offering is in accordance with these General Terms and the applicable Order. For On-Premises Products, we may also ask you from time to time, but not more frequently than once per calendar period, to cooperate with us to verify usage and adherence to purchased Capacities. If Splunk requests a verification process, you agree to provide Splunk reasonable access to the On-Premises Product installed at your facility (or as hosted by your Third-Party Provider). If Splunk does any verification, it will be performed with as little interference as possible to your use of the On-Premises Product and your business operations. Splunk will comply with your (or your Third-Party Providers') reasonable security procedures.
- (B) **Overages.** If a verification or usage report reveals that you have exceeded the purchased Capacity or usage rights for your Purchased Offering (e.g., used as a service bureau) during the period reviewed, then we will have the right to invoice you using the applicable Fees at list price then in effect, which will be payable in accordance with these General Terms. Without limiting Splunk's

foregoing rights, with respect to Hosted Services, Splunk may work with you to reduce usage so that it conforms to the applicable usage limit, and we will in good faith discuss options to right size your subscription as appropriate. Notwithstanding anything to the contrary herein, Splunk will have the right to directly invoice you for overages, regardless of whether you purchased the Purchased Offering from an authorized reseller or Digital Marketplace. See the Specific Offering Terms for any additional information related to overages for a Hosted Service.

13. Our Use of Open Source

Certain Offerings may contain Open Source Software. Splunk makes available in the applicable Documentation a list of Open Source Software incorporated in our On-Premises Products as required by the respective Open Source Software licenses. Any Open Source Software that is delivered as part of your Offering and which may not be removed or used separately from the Offering is covered by the warranty, support and indemnification provisions applicable to the Offering. Some of the Open Source Software may have additional terms that apply to the use of the Offering (e.g., the obligation for us to provide attribution of the specific licensor), and those terms will be included in the Documentation; however, these terms will not (a) impose any additional restrictions on your use of the Offering, or (b) negate or amend any of our responsibilities with respect to the Offering.

14. Splunk Developer Tools and Customer Extensions

Splunk makes Splunk Developer Tools available to you so you can develop Extensions for use with your Purchased Offerings (Extensions that you develop, "**Customer Extensions**").

You have a nonexclusive, worldwide, nontransferable, nonsublicensable right, subject to the terms of these General Terms, to use Splunk Developer Tools to develop your Customer Extensions, including to support interoperability between the Offering and your system or environment. Splunk proprietary legends or notices contained in the Splunk Developer Tools may not be removed or altered when used in or with your Customer Extension. You retain title to your Customer Extensions, subject to Splunk's ownership in our Offerings and any materials and technology provided by Splunk in connection with the Splunk Developer Tools. You agree to assume full responsibility for the performance and distribution of Customer Extensions.

15. Third Party Products, Third-Party Extensions, Third-Party Content and Unsupported Splunk Extensions

- (A) **Third-Party Extensions on Splunkbase.** Splunk makes Extensions developed and/or made available by a third-party on Splunkbase ("**Third-Party Extension**") available for download or access as a convenience to its customers. Splunk makes no promises or guarantees related to any Third-Party Extension, including the accuracy, integrity, quality, or security of the Third-Party Extension. Nothing in these General Terms or on Splunkbase will be deemed to be a representation or warranty by Splunk with respect to any Third-Party Extension, even if a particular Third-Party Extension is identified as "certified" or "validated" for use with an Offering. We may, in our reasonable discretion, block or disable access to any Third-Party Extension at any time. Your use of a Third-Party Extension is at your own risk and may be subject to any additional terms, conditions, and policies applicable to that Third-Party Extension (such as license terms, terms of service, or privacy policies of the providers of such Third-Party Extension). Third-Party Extensions may be installed on Hosted Services pursuant to our instructions.
- (B) **Third-Party Content.** Hosted Services may contain features or functions that enable interoperation with Third-Party Content that you, in your sole discretion, choose to add to a Hosted Service. You may be required to obtain access separately to such Third-Party Content from the respective providers, and you may be required to grant Splunk access to your accounts with such providers to the extent necessary for Splunk to allow the interoperation with the Hosted Service. By requesting or allowing Splunk to enable access to such Third-Party Content in connection with the Hosted Services, you certify that you are authorized under the provider's terms to allow such access. If you install or enable (or direct or otherwise authorize Splunk to install or enable) Third-Party Content for use with a Hosted Service where the interoperation includes access by the third-party provider to your Customer Content, you hereby authorize Splunk to allow the provider of such Third-Party Content to access Customer Content as necessary for the interoperation. You agree that Splunk is not responsible or liable for disclosure, modification or deletion of Customer Content resulting from access to Customer Content by such Third-Party Content, nor is Splunk liable for any damages or downtime that you may incur or any impact on your experience of the Hosted Service, directly or indirectly, as a result of your use of and/or reliance upon, any Third-Party Content, sites or resources.
- (C) **Splunk As a Reseller.** When you purchase third party products ("**Third Party Products**") from Splunk as specified in an Order (which products shall include third party software, but not any support which Splunk itself has contracted to provide), the following provision applies. Splunk acts solely as a reseller of Third Party Products, which are fulfilled by the relevant third party vendor

("Third Party Vendor"), and the purchase and use of Third Party Products is subject solely to the terms, conditions and policies made available by such Third Party Vendor. Consequently, Splunk makes no representation or warranty of any kind regarding the Third Party Products, whether express, implied, statutory or otherwise, and specifically disclaims all implied terms, conditions and warranties (including as to quality, performance, availability, fitness for a particular purpose or non-infringement) to the maximum extent permitted by applicable law. You will bring any claim in relation to Third Party Products against the applicable Third Party Vendor directly. In no event will Splunk be liable to you for any claim, loss or damage arising out of the use, operation or availability of Third Party Product (whether such liability arises in contract, negligence, tort, or otherwise).

- (D) **Unsupported Splunk Extensions.** The Service Level Schedule commitments for any applicable Hosted Services will not apply to Splunk Extensions labeled on Splunkbase as "**Not Supported.**" You agree that Splunk is not responsible for any impact on your experience of a Hosted Service, as a result of your installation and/or use of any "Not Supported" Splunk Extensions, and that your sole remedy will be to remove the "Not Supported" Splunk Extension from the applicable Hosted Service. Further, some Splunk Extensions may not be compatible or certified for use with that Hosted Service (e.g., only specific Splunk Extensions are validated for our FedRAMP authorized environment for Splunk Cloud Platform). Please refer to the applicable Documentation for more information related to the Splunk Extensions compatible with your specific Purchased Offering.

16. Your Compliance

- (A) **Lawful Use of Offerings.** When you access and use an Offering, you are responsible for complying with all laws, rules, and regulations applicable to your access and use. This includes being responsible for your Customer Content and users, for your users' compliance with these General Terms, and the accuracy, lawful use of, and the means by which you acquired your Customer Content. You may not transmit and/or store PHI Data, PCI Data or ITAR Data within a Hosted Services unless you have specifically purchased a Purchased Offering for that applicable regulated Hosted Services environment (as identified in an Order).
- (B) **Registration.** You agree to provide accurate and complete information when you register for and use any Offering and agree to keep this information current. Each person who uses any Offering must have a separate username and password. For Hosted Services, you must provide a valid email address for each person authorized to use your Hosted Services, and you may only have one person per username and password. Splunk may reasonably require additional information in connection with certain Offerings (e.g., technical information necessary for your connection to a Hosted Service), and you will provide this information as reasonably requested by Splunk. You are responsible for securing, protecting, and maintaining the confidentiality of your account usernames, passwords and access tokens.
- (C) **Export Compliance.** You will comply with all applicable export laws and regulations of the United States and any other country ("**Export Laws**") where your users use any of the Offerings. You certify that you are not on any of the relevant U.S. government lists of prohibited persons, including the Treasury Department's List of Specially Designated Nationals and the Commerce Department's List of Denied Persons or Entity List. You will not export, re-export, ship, transfer or otherwise use the Offerings in any country subject to an embargo or other sanction by the United States, including, without limitation, Iran, Syria, Cuba, the Crimea Region of Ukraine, Sudan and North Korea, and you will not use any Offering for any purpose prohibited by the Export Laws.
- (D) **GovCloud Services.** If you access or use any Hosted Services in the specially isolated Amazon Web Services ("**AWS**") GovCloud (US) region (including without limitation any Hosted Services that are provisioned in a FedRAMP authorized environment), you represent and warrant that users will only access the Hosted Services in the AWS GovCloud (US) region if users: (i) are "US Person(s)" as defined under ITAR (see 22 CFR part 120.15); (ii) have and will maintain a valid Directorate of Defense Trade Controls registration, if required by ITAR; (iii) are not subject to export control restrictions under US export control laws and regulations (i.e., users are not denied or debarred parties or otherwise subject to sanctions); and (iv) maintain an effective compliance program to ensure compliance with applicable US export control laws and regulations, including ITAR, as applicable. If you access or use any Hosted Services in an IL5 authorized environment, you further represent and warrant that only users who are US citizens will access the Hosted Services. You are responsible for verifying that any user accessing Customer Content in the Hosted Services in the AWS GovCloud (US) region is eligible to access such Customer Content. The Hosted Services in the AWS GovCloud (US) region may not be used to process or store classified data. You will be responsible for all sanitization costs incurred by Splunk if users introduce classified data into the Hosted Services in the AWS GovCloud (US) region. For selected FedRAMP authorized regions, you may be required to execute additional addendums to this agreement prior to provisioning of Hosted Services.
- (E) **Acceptable Use.** Without limiting any terms under these General Terms, you will also abide by our Hosted Services acceptable use policy: <https://www.splunk.com/view/SP-CAAAMB6>.

17. Confidentiality

- (A) **Confidential Information.** Each party will protect the Confidential Information of the other. Accordingly, Receiving Party agrees to: (i) protect the Disclosing Party's Confidential Information using the same degree of care (but in no event less than reasonable care) that it uses to protect its own Confidential Information of a similar nature; (ii) limit use of Disclosing Party's Confidential Information for purposes consistent with these General Terms, and (iii) use commercially reasonable efforts to limit access to Disclosing Party's Confidential Information to its employees, contractors and agents or those of its Affiliates who have a bona fide need to access such Confidential Information for purposes consistent with these General Terms and who are subject to confidentiality obligations no less stringent than those herein.
- (B) **Compelled Disclosure of Confidential Information.** Notwithstanding the foregoing terms, the Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law enforcement agencies, regulators, or state law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a Party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

18. Payment

The payment terms below only apply when you purchase Offerings directly from Splunk. When you purchase from an authorized reseller or Digital Marketplace, the payment terms are between you and the authorized reseller or Digital Marketplace. However, a breach of your payment obligations for an Offering with a Digital Marketplace will be deemed a breach of this Section 18.

- (A) **Fees.** You agree to pay all Fees specified in the Orders. Fees are non-cancelable and non-refundable, except as otherwise expressly set forth in these General Terms. Without limiting any of our other rights or remedies herein, overdue charges may accrue interest monthly at the rate of 1.5% of the then-outstanding unpaid balance, or the maximum rate permitted by law, whichever is lower. Fees are due and payable either within 30 days from the date of Splunk's invoice or as otherwise stated in the Order.
- (B) **Credit Cards.** If you pay by credit, or debit card you: (i) will provide Splunk or its designated third-party payment processor with valid credit or debit card information; and (i) hereby authorize Splunk or its designated third-party payment processor to charge such credit or debit card for all items listed in the applicable Order. Such charges must be paid in advance or in accordance with any different billing frequency stated in the applicable Order. You are responsible for providing complete and accurate billing and contact information and notifying Splunk in a timely manner of any changes to such information.
- (C) **Taxes.** All Fees quoted are exclusive of applicable taxes and duties, including any applicable sales and use tax. You are responsible for paying any taxes or similar government assessments (including, without limitation, value-added, sales, use or withholding taxes). We will be solely responsible for taxes assessable against us based on our net income, property, and employees.

19. Splunk's Warranties

- (A) **Relationship to Applicable Law.** We will not seek to limit our liability, or any of your warranties, rights and remedies, to the extent the limits are not permitted by applicable law (e.g., warranties, remedies or liabilities that cannot be excluded by applicable law).
- (B) **General Corporate Warranty.** Splunk warrants that it has the legal power and authority to enter into these General Terms.
- (C) **Hosted Services Warranty.** Splunk warrants that during the applicable Term: (i) Splunk will not materially decrease the overall functionality of the Hosted Services; and (ii) the Hosted Services will perform materially in accordance with the applicable Documentation. Our sole and exclusive liability, and your sole and exclusive remedy for any breach of these warranties, will be your right to terminate the applicable Hosted Services Purchased Offering, and we will refund to you any prepaid but unused Fees for the remainder of the Term.
- (D) **On-Premises Product Warranty.** Splunk warrants that for a period of ninety (90) days from the Delivery of an On-Premises Product, the On-Premises Product will substantially perform the material functions described in the applicable Documentation for such On-Premises Product, when used in accordance with the applicable Documentation. Splunk's sole liability, and your sole remedy, for any failure of the On-Premises Product to conform to the foregoing warranty, is for Splunk to do one of the following (at Splunk's sole option and discretion) (i) modify, or provide an Enhancement for, the On-Premises Product so that it conforms to the foregoing warranty, (ii) replace your copy of the On-Premises Product with a copy that conforms to the foregoing warranty, or (iii)

terminate the Purchased Offering with respect to the non-conforming On-Premises Product and refund the Fees paid by you for such non-conforming On-Premises Product.

- (E) **Disclaimer of Implied Warranties.** Except as expressly set forth above, the Offerings are provided “as is” with no warranties or representations whatsoever express or implied. Splunk and its suppliers and licensors disclaim all warranties and representations, including any implied warranties of merchantability, satisfactory quality, fitness for a particular purpose, noninfringement, or quiet enjoyment, and any warranties arising out of course of dealing or trade usage. Splunk does not warrant that use of Offerings will be uninterrupted, error free or secure, or that all defects will be corrected..

20. Ownership

- (A) **Offerings.** As between you and Splunk, Splunk owns and reserves all right, title, and interest in and to the Offerings, developer tools and other Splunk materials, including all intellectual property rights therein. We retain rights in anything delivered or developed by us or on our behalf under these General Terms. No rights are granted to you other than as expressly set forth in these General Terms.
- (B) **Customer Content.** You own and reserve all right, title and interest in your Customer Content. By sending Customer Content to a Hosted Service, you grant us a worldwide, royalty free, non-exclusive license to access and use the Customer Content for purposes of providing you the Hosted Service.
- (C) **Feedback.** You have no obligation to provide us with ideas for improvement, suggestions, or other feedback (collectively, “Feedback”) in connection with an Offering, unless otherwise expressly set forth in the applicable Order. If, however, you provide any Feedback, you hereby grant to Splunk a non-exclusive, transferable, irrevocable, worldwide, royalty-free license (with rights to sublicense) to make, use, sell, offer to sell, reproduce, modify, distribute, make available, publicly display and perform, disclose and otherwise commercially exploit the Feedback.

21. Term and Termination

- (A) **Term and Renewal.** These General Terms will commence upon the Effective Date and will remain in effect until the expiration of all applicable Purchased Offerings, unless earlier terminated pursuant to this Section. Termination of a specific Purchased Offering will not affect the Term of any other Purchased Offering. Termination of these General Terms will have the effect of terminating all Purchased Offerings. Grounds for terminating a Purchased Offering (e.g., for non-payment), that are specific to the Purchased Offering, will not be grounds to terminate Purchased Offerings where no breach exists. Unless indicated otherwise in an Order, the Term of a Purchased Offering (and these General Terms) will renew, until December 31, 2025, for an additional period of time equal to the length of the preceding Term or other agreed upon period, upon mutual agreement of the parties, unless one party notifies the other of its intent not to renew at least one (1) day in advance of the expiration of the Term or then-current renewal period.
- (B) **Termination.** Either party may terminate these General Terms, or any Purchased Offering, by written notice to the other party in the event of a material breach of these General Terms, or the specific terms associated with that Purchased Offering, that is not cured within thirty (30) days of receipt of the notice. Upon any expiration or termination of a Purchased Offering, the rights and licenses granted to you for that Purchased Offering will automatically terminate, and you agree to promptly (i) cease using and accessing the Offering, (ii) return or destroy all copies of any On-Premises Products and other Splunk materials and Splunk Confidential Information in your possession or control, and (iii) upon our request, certify in writing the completion of such return or destruction. Upon termination of these General Terms or any Purchased Offering, Splunk will have no obligation to refund any Fees or other amounts received from you during the Term. Notwithstanding any early termination above, except for your termination for our uncured material breach, you will still be required to pay all Fees payable under an Order.
- (C) **Survival.** The termination or expiration of these General Terms will not affect any provisions herein which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, ownership of intellectual property, confidentiality, payment obligations, effect of termination, limitation of liability, privacy, and the “Miscellaneous” section in these General Terms.
- (D) **Suspension of Service.** In the event of a material breach or threatened material breach of this Agreement, Splunk may, without limiting its other rights and remedies, suspend your use of the Hosted Service until such breach is cured or Splunk reasonably believes there is no longer a threat, provided that, we will give you at least five (5) days’ prior notice before suspension. Suspension of a Hosted Service will have no impact on the duration of the Term of the Purchased Offering, or the associated Fees owed.

22. Limitation of Liability

In no event will the aggregate liability of either party, together with any of its Affiliates, arising out of or related to any Purchased Offering exceed the total amount paid by you for that Purchased Offering in the twelve (12) months preceding the first incident

out of which the liability arose. However, the foregoing limitation will not limit your obligations under the “Payment” section above and will not be deemed to limit your rights to any service level credits under any applicable Service Level Schedule. Furthermore, the cap above will not be deemed to limit Splunk’s right to recover amounts for your use of an Offering in excess of the Capacity purchased or use outside of Internal Business Purposes.

In no event will either party or its Affiliates have any liability arising out of or related to these General Terms for any lost profits, revenues, goodwill, or indirect, special, incidental, consequential, cover, business interruption or punitive damages.

The foregoing limitations will apply whether the action is in contract or tort and regardless of the theory of liability, even if a party or its Affiliates have been advised of the possibility of such damages or if a party’s or its Affiliates’ remedy otherwise fails of its essential purpose.

The limitation of liability herein will not apply to a party’s infringement of the other party’s intellectual property rights, indemnification obligations, or the fraud, gross negligence or willful misconduct of a party.

The foregoing disclaimers of damages will also not apply to the extent prohibited by law. Some jurisdictions do not allow the exclusion or limitation of certain damages. To the extent such a law applies to you, some or all of the exclusions or limitations set forth above may not apply to you, and you may have additional rights.

23. Indemnity

- (A) **Our Indemnification to You.** Splunk will defend and indemnify you, and pay all damages (including attorneys’ fees and costs) awarded against you, or that are agreed to in a settlement, to the extent a claim, demand, suit or proceeding is made or brought against you or your Affiliates by a third party (including those brought by a government entity) alleging that a Purchased Offering infringes or misappropriates such third party’s patent, copyright, trademark or trade secret (a “**Customer Claim**”). Splunk will have no obligation under the foregoing provision to the extent a Customer Claim arises from your breach of these General Terms, your Customer Content, Third-Party Extension, or the combination of the Offering with: (i) Customer Content; (ii) Third-Party Extensions; (iii) any software other than software provided by Splunk; or (iv) any hardware or equipment. However, Splunk will indemnify against combination claims to the extent (y) the combined software is necessary for the normal operation of the Purchased Offering (e.g., an operating system), or (z) the Purchased Offering provides substantially all the essential elements of the asserted infringement or misappropriation claim. Splunk may in its sole discretion and at no cost to you: (1) modify any Purchased Offering so that it no longer infringes or misappropriates a third party right, (2) obtain a license for your continued use of the Purchased Offering, in accordance with these General Terms, or (3) terminate the Purchased Offering and refund to you any prepaid fees covering the unexpired Term.
- (B) **Your Indemnification to Us.** Unless expressly prohibited by applicable law, you will defend and indemnify us, and pay all damages (including attorneys’ fees and costs) awarded against Splunk, or that are agreed to in a settlement, to the extent a claim, demand, suit or proceeding is made or brought against Splunk or its Affiliates by a third party (including those brought by a government entity) that: (i) alleges that your Customer Content or Customer Extensions infringes or misappropriates such third party’s patent, copyright, trademark or trade secret, or violates another right of a third party; or (ii) alleges that your Customer Content or your use of any Offering violates applicable law or regulation.
- (C) **Mutual Indemnity.** Each party will defend, indemnify and pay all damages (including attorneys’ fees and costs) awarded against the other party, or that are agreed to in a settlement to the extent that an action brought against the other party by a third party is based upon a claim for bodily injury (including death) to any person, or damage to tangible property resulting from the negligent acts or willful misconduct of the indemnifying party or its personnel hereunder, and will pay any reasonable, direct, out-of-pocket costs, damages and reasonable attorneys’ fees attributable to such claim that are awarded against the indemnified party (or are payable in settlement by the indemnified party).
- (D) **Process for Indemnification.** The indemnification obligations above are subject to the party seeking indemnification to: (i) provide the other party with prompt written notice of the specific claim; (ii) give the indemnifying party sole control of the defense and settlement of the claim (except that the indemnifying party may not settle any claim that requires any action or forbearance on the indemnified party’s part without their prior consent, which will not unreasonably withhold or delay); and (iii) gives the indemnifying party all reasonable assistance, at such party’s expense.

24. Updates to Offerings

Our Offerings and policies may be updated over the course of our relationship. From time to time, Splunk may update or modify an Offering and our policies, provided that: (a) the change and modification applies to all customers generally, and are not targeted to any particular customer; (b) no such change or modification will impose additional fees on you during the applicable Term or additional

restrictions on your use of the Offering, (c) no such change will override or supersede the allocation of risk between us under these General Terms, including without limitation the terms under Sections 22 (Limitation of Liability) and 23 (Indemnity); (d) no such change or modification will materially reduce the security protections or overall functionality of the applicable Offering; and (e) any such change or modification will apply only prospectively, and will not apply to any breach or dispute that arose between the parties prior to the effective date of the change or modification. In the event of any conflict between these General Terms and the policies incorporated herein by reference, these General Terms will control.

25. Governing Law

These General Terms will be governed by and construed in accordance with the laws of the State of California, as if performed wholly within the state and without giving effect to the principles of conflict of law. Any legal action or proceeding arising under these General Terms will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby consent to personal jurisdiction and venue therein. Splunk may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of intellectual property or other proprietary rights of Splunk, its Affiliates, or any third party.

Neither the Uniform Computer Information Transactions Act nor the United Nations Convention for the International Sale of Goods will apply to these General Terms.

26. Use of Customer Name

You agree that we may add your name to our customer list and identify you as a Splunk customer on Splunk's websites. Any further public use of your name in connection with Splunk marketing activities (e.g., press releases) will require your prior approval.

27. Miscellaneous

- (A) **Different Terms.** Splunk expressly rejects terms or conditions in any Customer purchase order or other similar document that are different from or additional to the terms and conditions set forth in these General Terms. Such different or additional terms and conditions will not become a part of the agreement between the parties notwithstanding any subsequent acknowledgement, invoice or license key that Splunk may issue.
- (B) **No Future Functionality.** You agree that your purchase of any Offering is not contingent on the delivery of any future functionality or features, or dependent on any oral or written statements made by Splunk regarding future functionality or features.
- (C) **Notices.** Except as otherwise specified in these General Terms, all notices related to these General Terms will be sent in writing to the addresses set forth in the applicable Order, or to such other address as may be specified by either party to the other party, and will be effective upon (i) personal delivery, (ii) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("**Legal Notices**"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant system administrator designated by Customer.
- (D) **Assignment.** Neither party may assign, delegate, or transfer these General Terms, in whole or in part, by agreement, operation of law or otherwise without the prior written consent of the other party, however Splunk may assign these General Terms in whole or in part to an Affiliate or in connection with an internal reorganization or a merger, acquisition, or sale of all or substantially all of Splunk's assets to which these General Terms relates. Any attempt to assign these General Terms other than as permitted herein will be null and void. Subject to the foregoing, these General Terms will bind and inure to the benefit of the parties' permitted successors and assigns.
- (E) **U.S. Government Use Terms.** Splunk provides Offerings for U.S. federal government end use solely in accordance with the following: Government technical data and rights related to Offerings include only those rights customarily provided to the public as defined in these General Terms. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and, for Department of Defense transactions, DFARS 252.227-7015 (Technical Data—Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Commercial Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Splunk to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.
- (F) **Waiver; Severability.** The waiver by either party of a breach of or a default under these General Terms will not be effective unless in writing. The failure by either party to enforce any provisions of these General Terms will not constitute a waiver of any other right

hereunder or of any subsequent enforcement of that or any other provisions. If a court of competent jurisdiction holds any provision of these General Terms invalid or unenforceable, the remaining provisions of these General Terms will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

- (G) **Integration; Entire Agreement.** These General Terms along with any additional terms incorporated herein by reference, constitute the complete and exclusive understanding and agreement between the parties and supersedes any and all prior or contemporaneous agreements, communications and understandings, written or oral, relating to their subject matter. Except as otherwise expressly set forth herein, any waiver, modification, or amendment of any provision of these General Terms will be effective only if in writing and signed by duly authorized representatives of both parties.
- (H) **Force Majeure.** Neither party or its Affiliates, subsidiaries, officers, directors, employees, agents, partners and licensors will (except for the obligation to make any payments) be liable for any delay or failure to perform any obligation under these General Terms where the delay or failure results from any cause beyond their reasonable control, including, without limitation, acts of God, labor disputes or other industrial disturbances, electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockades, embargoes, riots, acts or orders of government, acts of terrorism, or war.
- (I) **Independent Contractors; No Third-Party Beneficiaries.** The parties are independent contractors. These General Terms do not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third-party beneficiaries of these General Terms. Neither party has the authority to bind or act on behalf of the other party in any capacity or circumstance whether by contract or otherwise.

General Terms Definitions Exhibit

"Affiliates" means a corporation, partnership or other entity controlling, controlled by or under common control with such party, but only so long as such control continues to exist. For purposes of this definition, "control" means ownership, directly or indirectly, of greater than fifty percent (50%) of the voting rights in such entity (or, in the case of a noncorporate entity, equivalent rights).

"Capacity" means the measurement of usage of an Offering (e.g., aggregate daily volume of data indexed, specific source type rights, number of search and compute units, number of monitored accounts, virtual CPUs, user seats, use cases, storage capacity, etc.) that is purchased for an Offering, as set forth in the applicable Order. The Capacities for each of our Offerings can be found here: https://www.splunk.com/en_us/legal/licensed-capacity.html.

"CCPA" means the California Consumer Privacy Act of 2018.

"Confidential Information" means all nonpublic information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as "confidential" or that, given the nature of the information or circumstances surrounding its disclosure, should reasonably be understood to be confidential. Notwithstanding the foregoing, "Confidential Information" does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

"Content Subscription" means the right of Customer to receive content applicable to an Offering (e.g., models, templates, searches, playbooks, rules and configurations, as described in the relevant Documentation) on a periodic basis over the applicable Term. Content Subscriptions are purchased as an add-on service and are identified in an Order.

"Customer Content" means any data that is ingested by or on behalf of you into an Offering from your internal data sources.

"Delivery" means the date of Splunk's initial delivery of the license key for the applicable Offering or, for Hosted Services, the date Splunk makes the applicable Offering available to you for access and use.

"Digital Marketplace" means an online or electronic marketplace operated or controlled by a third party where Splunk has authorized the marketing and distribution of its Offerings.

"Documentation" means the online user guides, documentation and help and training materials published on Splunk's website (such as at <https://docs.splunk.com/Documentation>) or accessible through the applicable Offering, as may be updated by Splunk from time to time.

"Enhancements" means any updates, upgrades, releases, fixes, enhancements, or modifications to a Purchased Offering made generally commercially available by Splunk to its customers under the terms and conditions in the Support Exhibit.

"Extension" means any separately downloadable or accessible suite, configuration file, add-on, technical add-on, plug-in, example module, command, function, playbook, content or application that extends the features or functionality of the applicable Offering.

"Fees" means the fees that are applicable to an Offering, as identified in the Order.

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data) as updated, amended or replaced from time to time.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended, and supplemented by the Health Information Technology for Economic and Clinical Health Act.

"Hosted Service" means a technology service hosted by or on behalf of Splunk and provided to you.

"Internal Business Purpose" means your use of an Offering for your own internal business operations, based on the analysis, monitoring or processing of your data from your systems, networks, and devices. Such use does not include use on a service bureau basis or otherwise to provide services to, or process data for, any third party, or otherwise use to monitor or service the systems, networks and devices of third parties.

"ITAR Data" means information protected by the International Traffic in Arms Regulations.

"Nonprofit" means a U.S. Federal 501(c)(3), tax-exempt, nonprofit corporation or association (or other nonprofit entity organized in accordance with the laws of where your nonprofit entity is registered) that has qualified for a free, donated Offering in connection with a Splunk donation program.

"Offerings" means the products, services, and other offerings that Splunk makes generally available, including without limitation On-Premises Products, Hosted Services, Support Programs, Content Subscriptions and Configuration and Implementation Services.

"On-Premises Product" means the Splunk software that is delivered to you and deployed and operated by you or on your behalf on hardware designated by you, and any Enhancements made available to you by Splunk.

"Open Source Software" means software that is licensed under a license approved by the Open Source Initiative or similar freeware license, with terms requiring that such software code be (i) disclosed or distributed in source code or object code form, (ii) licensed for the purpose of making derivative works, and/or (iii) redistributed under the same license terms.

"Orders" means Splunk's quote or ordering document (including online order form) accepted by you via your purchase order or other ordering document submitted to Splunk (directly or indirectly through an authorized reseller or Digital Marketplace) to order Offerings, which references the Offering, Capacity, pricing and other applicable terms set forth in an applicable Splunk quote or ordering document. Orders do not include the terms of any preprinted terms on your purchase order or other terms on a purchase order that are additional or inconsistent with the terms of these General Terms.

"PCI Data" means credit card information within the scope of the Payment Card Industry Data Security Standard.

"PHI Data" means any protected health data, as defined under HIPAA.

"Purchased Offerings" means the services, subscriptions and licenses to Offerings that are acquired by you under Orders, whether directly or through an authorized reseller or Digital Marketplace.

"Service Level Schedule" means a Splunk policy that applies to the availability and uptime of a Hosted Service and which, if applicable, offers service credits as set forth therein.

"Splunkbase" means Splunk's online directory of or platform for Extensions, currently located at <https://splunkbase.splunk.com> and any and all successors, replacements, new versions, derivatives, updates and upgrades and any other similar platform(s) owned and/or controlled by Splunk.

"Splunk Developer Tool" means the standard application programming interface, configurations, software development kits, libraries, command line interface tools, other tooling (including scaffolding and data generation tools), integrated development environment plug-ins or extensions, code examples, tutorials, reference guides and other related materials identified and provided by Splunk to facilitate or enable the creation of Extensions or otherwise support interoperability between the Software and your system or environment.

"Splunk Extensions" means Extensions made available through Splunkbase that are identified on Splunkbase as built by Splunk (and not by any third party).

"Support Programs" are the Support Programs offered by Splunk and identified here: https://www.splunk.com/en_us/support-and-services/support-programs.html.

"Term" means the duration of your subscription or license to the applicable Offering that starts and ends on the date listed on the applicable Order. If no start date is specified in an Order, the start date will be the Delivery date of the Offering.

"Third-Party Content" means information, data, technology, or materials made available to you by any third party that you license and add to a Hosted Service or direct Splunk to install in connection with a Hosted Service. Third-Party Content includes but is not limited to, Third-Party Extensions, web-based or offline software applications, data service or content that are provided by third parties.

"Usage Data" means data generated from the usage, configuration, deployment, access, and performance of an Offering. For example, this may include such things as information about your operating environment, such as your network and systems architecture, or sessions, such as page loads and session views, duration, or interactions, errors, number of searches, source types and format (e.g., json, xml, csv), ingest volume, number of active and licensed users, or search concurrency. Usage Data does not include Customer Content.

UNITED STATES STATE & LOCAL GOVERNMENT LAW EXHIBIT TO SPLUNK GENERAL TERMS

This exhibit (the “**Exhibit**”) forms an integral part of the Splunk General Terms. In the event of any conflict between the General Terms and this Exhibit, this Exhibit will prevail and control. **This Exhibit is applicable only if you are a United States state or local government entity, including a public institute of higher education.**

1. **Your Compliance.** A new Section 16 (F) of the General Terms is added as follows:

- (F) **Respecting the Rights of Third Parties and Applicable Regulations.** You represent and warrant that to the best of your knowledge (i) Your Customer Content or Customer Extensions do not infringe or misappropriate third party patent, copyrights, trademarks or trade secrets, or violates another right of a third party; and that (ii) Your Content or your use of any Offering do not violate laws or regulations applicable to You.

2. **Limitation of Liability.** Section 22 of the General Terms is replaced in its entirety with the following:

22. Limitation of Liability

In no event will the aggregate liability of either party, together with any of its Affiliates, arising out of or related to any Purchased Offering exceed the total amount paid by you for that Purchased Offering in the twelve (12) months preceding the first incident out of which the liability arose. However, the foregoing limitation will not limit your obligations under the “Payment” section above, and will not be deemed to limit your rights to any service level credits under any applicable Service Level Schedule. Furthermore, the cap above will not be deemed to limit Splunk’s right to recover amounts for your use of an Offering in excess of the Capacity purchased or use outside of Internal Business Purposes.

In no event will either party or its Affiliates have any liability arising out of or related to these General Terms for any lost profits, revenues, goodwill, or indirect, special, incidental, consequential, cover, business interruption or punitive damages.

The foregoing limitations will apply whether the action is in contract or tort and regardless of the theory of liability, even if a party or its Affiliates have been advised of the possibility of such damages or if a party’s or its Affiliates’ remedy otherwise fails of its essential purpose.

The limitation of liability herein will not apply to a party’s infringement of the other party’s intellectual property rights, indemnification obligations, Customer’s breach of sections 9(i) or 16(F), or the fraud, gross negligence or willful misconduct of a party.

The foregoing disclaimers of damages will also not apply to the extent prohibited by law. Some jurisdictions do not allow the exclusion or limitation of certain damages. To the extent such a law applies to you, some or all of the exclusions or limitations set forth above may not apply to you, and you may have additional rights.

3. **Indemnity.** Section 23 of the General Terms is replaced in its entirety with the following:

23. Indemnity

- (A) **Our Indemnification to You.** Splunk will defend and indemnify you, and pay all damages (including attorneys’ fees and costs) awarded against you, or that are agreed to in a settlement, to the extent a claim, demand, suit or proceeding is made or brought against you or your Affiliates by a third party (including those brought by a government entity) alleging that a Purchased Offering infringes or misappropriates such third party’s patent, copyright, trademark or trade secret (a “**Customer Claim**”). Splunk will have no obligation under the foregoing provision to the extent a Customer Claim arises from your breach of these General Terms, your Customer Content, Third-Party Extension, or the combination of the Offering with: (i) Customer Content; (ii) Third-Party Extensions; (iii) any software other than software provided by Splunk; or (iv) any hardware or equipment. However, Splunk will indemnify against combination claims to the extent (y) the combined software is necessary for the normal operation of the Purchased Offering (e.g., an operating system), or (z) the Purchased Offering provides substantially all the essential elements of the asserted infringement or misappropriation claim. Splunk may in its sole discretion and at no cost to you: (1) modify any Purchased Offering so that it no longer infringes or misappropriates a third party right, (2) obtain a license for your continued use of the Purchased Offering, in accordance with these General Terms, or (3) terminate the Purchased Offering and refund to you any prepaid fees covering the unexpired Term.

- (B) **Process for Indemnification.** The indemnification obligations above are subject to the party seeking indemnification to: (i) provide the other party with prompt written notice of the specific claim; (ii) give the indemnifying party sole control of the defense and settlement of the claim to the maximum extent permissible under applicable law (except that the indemnifying party may not settle any claim that requires any action or forbearance on the indemnified party's part without their prior consent, which will not unreasonably withhold or delay); and (iii) gives the indemnifying party all reasonable assistance, at such party's expense.

4. **Governing Law.** Section 25 of the General Terms is replaced in its entirety with the following:

25. **Governing Law**

These General Terms will be governed by and construed in accordance with the laws of the State of California, as if performed wholly within the state and without giving effect to the principles of conflict of law. Any legal action or proceeding arising under these General Terms will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby consent to personal jurisdiction and venue therein. Splunk may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of intellectual property or other proprietary rights of Splunk, its Affiliates, or any third party. **Notwithstanding the foregoing, if you are a United States state or local government entity, including a public institute of higher education, the Agreement is governed by the laws of your state, excluding its conflict of laws principles. Any legal action or proceeding arising under these General Terms will be brought exclusively in the federal or state courts located in Travis County, Texas and the parties hereby consent to personal jurisdiction and venue therein. These General Terms do not affect statutory rights that cannot be waived or changed by contract.**

Neither the Uniform Computer Information Transactions Act nor the United Nations Convention for the International Sale of Goods will apply to these General Terms.

Support Exhibit to Splunk General Terms

This Support Exhibit forms a part of the Splunk General Terms and governs your purchase, and Splunk's provision of Support Services.

1. Support Programs

Support Programs purchased as part of a Purchased Offering will be identified in your applicable Order. Splunk will provide you the level of Support Services described under the purchased Support Program, subject to your payment of applicable Fees. **"Support Programs"** are the Support Programs offered by Splunk and identified here: https://www.splunk.com/en_us/support-and-services/support-programs.html.

2. Support Services

"Support Services" include technical support for your Purchased Offerings, and, when available, the provision of Enhancements for your Purchased Offerings, subject to the Support Policy described below. Technical support under a Support Program is available via web portal, and certain Support Programs also make support available via telephone. Support Services will be delivered by a member of Splunk's technical support team during the regional hours of operation applicable under the Support Program. Support Services are delivered in English unless you are in a location where we have made localized Support Services available.

3. Support Policy

Our Support Policy, provided here: https://www.splunk.com/en_us/legal/splunk-software-support-policy.html (**"Support Policy"**) describes the duration of our Support Services for certain Splunk On-Premises Products and other policies associated with our Support Services.

As we release new versions for our Offerings, we discontinue Support Services for certain older versions. Our Support Policy sets forth the schedule for the duration of support, and end of support, for Offering versions. The current versions of our Offerings that are supported under our Support Policy and will be our "Supported Versions" herein. The Support Policy may not apply to Hosted Services, and the product and services version we make available as our Hosted Services will be deemed Supported Versions herein.

4. Case Priority

Each Support Program offers different support levels for your case priority levels. When submitting a case, you will select the priority for initial response by logging the case online, in accordance with the priority guidelines set forth under your Support Program. When the case is received, we may in good faith change the priority if the issue does not conform to the criteria for the selected priority. When that happens, we will provide you with notice (electronic or otherwise) of such change.

5. Exclusions

We will have no obligation to provide support for issues caused by any of the following (each, a **"Customer Generated Error"**): (i) modifications to an Offering not made by Splunk; (ii) use of an Offering other than as authorized in the General Terms or as provided in the applicable Documentation; (iii) damage to the machine on which an On-Premises Product is installed; (iv) use of a version of an Offering other than the Supported Version; (v) third-party products that are not expressly noted in the Documentation as supported by Splunk; or (vi) conflicts related to replacing or installing hardware, drivers, and software that are not expressly supported by Splunk and described in the applicable Documentation. If we determine that support requested by you is for an issue caused by a Customer Generated Error, we will notify you of that fact as soon as reasonably possible under the circumstances. If you agree that we should provide support for the Customer Generated Error via a confirming email, then we will have the right to invoice you at our then-current time and materials rates for any such support provided by us.

6. Support for Splunk Extensions

Only Splunk Extensions that are labeled as **"Splunk Supported"** on Splunkbase, or other Splunk-branded marketplace, are eligible for support, and this support is limited. For those labeled Splunk Supported, we will provide an initial response and acknowledgement in accordance with the P3 terms that are applicable in the applicable Support Program, and Enhancements may be made available. No

other terms of a Support Program will apply to a Splunk Application. For those labeled as “**Not Supported**,” Splunk will have no support obligations.

7. Authorized Support Contacts

You are entitled to have a certain number of Support Contacts under each Support Program. “**Support Contacts**” means the individual(s) specified by you that are authorized to submit support cases.

The number of Support Contacts will be based on the Capacity of the Offering purchased, and the applicable Support Program. The number of Support Contacts will be set forth in customer’s entitlement information on the Splunk support portal.

We only take support requests from, and communicate with, your Support Contacts in connection with support cases. We strongly recommend that your Support Contact(s) are trained on the applicable Offering. In order to designate Support Contacts, you must provide the individual’s primary email address and Splunk.com login ID.

8. Defect Resolution

Should we determine that an Offering has a defect, we will, at our sole option, repair the defect in the version of the Offering that you are then currently using or instruct you to install a newer version of the Offering with that defect repaired. We reserve the right to provide you with a workaround in lieu of fixing a defect should we in our sole judgment determine that it is more effective to do so.

9. Your Assistance

Should you report a purported defect or error in an Offering, we may require you to provide us with the following information: (a) a general description of your operating environment; (b) a list of all hardware components, operating systems and networks; (c) a reproducible test case; and (d) any log files, trace and systems files. Your failure to provide this information may prevent us from identifying and fixing that purported defect.

10. Changes to Support Programs

You acknowledge that, subject to the Support Policy, and subject to any commitment we have during the Term, we have the right to discontinue the manufacture, development, sale or support of any Offering, at any time, in our sole discretion. We further reserve the right to alter Support Programs from time to time, using reasonable discretion, but in no event will such alterations, during the Term of any Order, result in diminished Support Services from the level of your applicable purchased Support Program.

Configuration and Implementation Services

Exhibit to Splunk General Terms

This Configuration and Implementation Services Exhibit forms a part of the Splunk General Terms and governs your purchase, and Splunk's provision of Configuration and Implementation Services.

Capitalized terms below are defined in the General Terms, this Exhibit or in the Definition Exhibit attached to this Exhibit.

1. Services and Statements of Work

We will perform the C&I Services for you that are set forth in the applicable Statements of Work. You will pay the Fees under each Statement of Work in accordance with these General Terms, or otherwise as we may expressly agree in the applicable Statement of Work.

In each Statement of Work, we will designate our primary point of contact for you for all matters relating to the applicable C&I Services (which we may change from time to time upon notice).

2. Our Personnel

- (A) **Qualifications.** The Personnel we assign to perform the C&I Services will be qualified, skilled, experienced and otherwise fit for the performance of the C&I Services. If you, in your reasonable judgement, determine that Personnel assigned to your project are unfit, we will in good faith discuss alternatives, and we will replace Personnel as reasonably necessary. You acknowledge that any replacement may cause delay in the performance of the C&I Services.
- (B) **Personnel Conduct.** Our Personnel are subject to our Splunk Code of Conduct and Ethics <https://investors.splunk.com/code-business-conduct-and-ethics-1>, which includes, without limitation, an obligation to comply with our policies on protecting customer information, prohibitions on illegal drugs and any impaired job performance, avoiding conflicts of interest, and acting ethically at all times. We also background check our employees, per the Section below.
- (C) **Use of Subcontractors.** We reserve the right to use subcontractors in performance of the C&I Services, provided: (a) any subcontractor we use meets the requirements herein and conditions of these General Terms and the Statement of Work; (b) we will be responsible for the subcontractor's compliance with the terms herein and the Statement of Work; and (c) upon your request or inquiry, we will identify any subcontractor that we are using, or plan to use, for C&I Services, and will cooperate in good faith to provide you with all relevant information regarding such subcontractors.
- (D) **No Employee Benefits.** We acknowledge and agree that our Personnel are not eligible for or entitled to receive any compensation, benefits, or other incidents of employment that you make available to your employees. We are solely responsible for all employment related taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between us and our Personnel and the performance of C&I Services by such Personnel.

3. Our Background Checks, Security and Compliance Obligations

- (A) **Compliance with Your Security Program.** While on your premises, our Personnel will comply with your security practices and procedures generally prescribed by you for onsite visitors and service providers. However, any requirement that is in addition to the compliance requirements set forth in this Schedule (e.g., background checks that are different from the background checks described herein) must be expressly set forth in a Statement of Work. We agree to discuss in good faith any condition or requirement you may have for our Personnel that are different from standard policies, however any additional requirement may delay C&I Services and must be vetted and implemented by mutual agreement of the parties and expressly set forth in a Statement of Work. Splunk does not guarantee that it will be able to meet any additional requested requirements.
- (B) **Our Security Practices.** We implement and follow an enterprise security program, with the policies, plans, and procedures set forth here www.splunk.com/prof-serv-isa. Our Personnel will be subject to the data protection and confidentiality obligations set forth in these General Terms with respect to any of your data that we may have access to in connection with the C&I Services.

- (C) **Background Checks.** For U.S.-based projects, we will not assign an employee to perform C&I Services under a Statement of Work unless we have run the following background check on the employee: Criminal Felony & Misdemeanor; SSN Validation; Federal Criminal; SSN Trace; Employment Report – Three (3) Employers; Education Report – One (1) Institution; Global Sanctions & Enforcement; Prohibited Parties; Widescreen Plus National Criminal Search.
- (D) **Permissions for Access.** In the event you require any Personnel to sign any waivers, releases, or other documents as a condition to gain access to your premises for performance of the C&I Services (“**Access Documents**”), you agree: (a) that Personnel who will be required to sign Access Documents will sign on behalf of Splunk; (b) that any additional or conflicting terms in Access Documents with these General Terms will have no effect; and (c) you will pursue any claims for breach of any terms in the Access Documents against Splunk and not the individual signing.

4. Your Materials

We will have no rights in or to any Customer Materials, however you grant us the right to use Customer Materials in order to provide the C&I Services. Nothing in these General Terms will be deemed to transfer to us any ownership of Customer Materials.

5. C&I Services Materials and Customizations Unique to You

- (A) **C&I Services Materials.** The C&I Services we perform (e.g., configuration of our Offerings), and the C&I Services Materials we offer, create, and deliver to you in connection with the C&I Services, are generally applicable to our business, and therefore we require the right to be able to re-use the C&I Services Materials we create for one customer in connection with all of our customers. For the avoidance of doubt, our use of the C&I Services Materials created for you in connection with C&I Services will comply with our ongoing obligations and restrictions with respect to your Customer Materials and your Confidential Information, and we will not identify you in any way in connection with our further use of such C&I Services Materials.
- (B) **Customer Owned Work Product.** However, in the unlikely event that the parties agree that C&I Services Materials for a project are custom work product unique to your business, and not applicable to other customers generally, we will transfer ownership to those agreed C&I Services Materials to you under the applicable Statement of Work. C&I Services Materials must be expressly identified as “**Customer Owned Work Product**” under a Statement of Work for ownership to pass to you. Subject to payment of applicable Fees under the Statement of Work, we hereby assign to you all rights, title and interest (including all Intellectual Property Rights therein) in and to all C&I Services Materials identified as Customer Owned Work Product (but excluding all Splunk Preexisting IP incorporated into the Customer Owned Work Product). At your request and expense, we will assist and cooperate with you in all reasonable respects and will execute documents and take such further acts reasonably requested by you to enable you to acquire, transfer, maintain, perfect, and enforce your ownership rights in such Customer Owned Work Product.
- (C) **Our Ownership.** Subject to your ownership rights in Customer Owned Work Product and Customer Materials, we will own all rights in and to all C&I Services Materials.
- (D) **License Rights.** For those C&I Services Materials that are not Customer Owned Work Product, you will have the right to access and use those C&I Services Materials in connection with your applicable Offerings, and those rights will be of the same scope and duration as your rights to the underlying Offering.

6. C&I Services Warranty

We warrant that the C&I Services will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of thirty (30) days from the completion of any C&I Services. As your sole and exclusive remedy and our entire liability for any breach of the foregoing warranty, we will, at our option and expense, promptly re-perform any C&I Services that fail to meet this warranty or refund to you the fees paid for the non-conforming C&I Services.

7. Your Cooperation

You acknowledge that your timely provision of (and our access to) your facilities, equipment, assistance, cooperation, data, information and materials from your officers, agents, and employees (the “**Cooperation**”) is essential to Splunk’s performance of the C&I Services. We will not be liable for any delay or deficiency in performing the C&I Services if you do not provide the necessary Cooperation. As part of the Cooperation, you will (1) designate a project manager or technical lead to liaise with us while we perform the C&I Services; (2) allocate and engage additional resources as may be required to assist us in performing the C&I Services; and (3) making available to us

any data, information and any other materials reasonably required by us to perform the C&I Services, including any data, information or materials specifically identified in the Statement of Work.

8. Insurance

Throughout any period of C&I Services we perform for you, we will maintain insurance policies in the types and amounts described below at our own expense:

- (i) Commercial General Liability Insurance with a limit of not less than \$1,000,000 per occurrence and a general aggregate limit of not less than \$2,000,000.
- (ii) Business Auto Insurance with a limit of not less than \$1,000,000 combined single limit. Such Insurance will cover liability arising out of "hired and non-owned" automobiles.
- (iii) Worker's Compensation Insurance as required by workers' compensation, occupational disease and occupational health and safety laws, statutes, and regulations.
- (iv) Technology Errors & Omissions Insurance with a limit of not less than \$3,000,000 per occurrence and general aggregate.
- (v) Umbrella/Excess Insurance with a limit of not less than \$3,000,000 per occurrence and general aggregate.

9. Change Order Process

You may submit written requests to us to change the scope of C&I Services described in a Statement of Work (each such request, a **"Change Order Request"**). If we elect to consider a Change Order Request, then we will promptly notify you if we believe that the Change Order Request requires an adjustment to the fees or to the schedule for the performance of the C&I Services. In such event, the parties will negotiate in good faith a reasonable and equitable adjustment to the fees and/or schedule, as applicable. We will continue to perform C&I Services pursuant to the existing Statement of Work and will have no obligation to perform any Change Order Request unless and until the parties have agreed in writing to such an equitable adjustment.

10. Expenses

Unless otherwise specified in the Statement of Work, we will not charge you for our expenses we incur in connection with a Statement of Work. Our daily C&I Services rates are inclusive of any expenses. In the event the parties agree that expenses are reimbursable under a Statement of Work, we will mutually agree on any travel policy and any required documentation for reimbursement.

11. Prepaid C&I Services

Unless otherwise expressly stated in a Statement of Work, all prepaid C&I Services must be redeemed within twelve (12) months from the date of purchase/invoice. At the end of the twelve (12) month term, any remaining pre-paid unused C&I Services will expire; no refunds will be provided for any remaining pre-paid unused C&I Services. Unless otherwise specifically stated in a Statement of Work, Education is invoiced and payable in advance.

Configuration and Implementation Services Definitions Exhibit

“C&I Services” means the services outlined in the Statement of Work.

“C&I Services Materials” means the materials and other deliverables that are provided to you as part of the C&I Services, and any materials, technology, know-how and other innovations of any kind that we or our Personnel may create or reduce to practice in the course of performing the C&I Services, including without limitation all improvements or modifications to our proprietary technology, and all Intellectual Property Rights therein.

“Customer Materials” means the data, information, and materials you provide to us in connection with your use of the C&I Services.

“Fees” means the fees that are applicable to the C&I Services, as identified in the Statement of Work.

“Intellectual Property Rights” means all worldwide intellectual property rights, including copyrights and other rights in works of authorship; rights in trademarks, trade names, and other designations of source or origin; rights in trade secrets and confidential information; and patents and patent applications.

“Personnel” means any employee, consultant, contractor, or subcontractor of Splunk.

“Splunk Preexisting IP” means, with respect to any C&I Services Materials, all associated Splunk technology and all Intellectual Property Rights created or acquired: (a) prior to the date of the Statement of Work that includes such C&I Services Materials, or (b) after the date of such Statement of Work but independently of the C&I Services provided under such Statement of Work.

“Statement of Work” means the statements of work and/or any and all applicable Orders, that describe the specific services to be performed by Splunk, including any materials and deliverables to be delivered by Splunk.



Amendment No. 1
to
Contract No. MA#NC210000067
for
Splunk Performance Monitoring, MGMT, and Creations
between
Sirius Computer Solutions Inc
and the
City of Austin, Texas

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

| | From | To |
|-------------|-------------------------------|--|
| Vendor Name | Sirius Computer Solutions Inc | CDW LLC DBA: Sirius Computer Solutions, LLC |
| Vendor Code | SIR7150895 | CDW7127170 |
| FEIN | [REDACTED] | [REDACTED] |

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Matthew
Duree

Digitally signed by
Matthew Duree
Date: 2022.03.30
11:19:40 -05'00'

Matthew Duree
Procurement Manager
City of Austin



**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
and
Sirius Computer Solutions, Inc.
("Contractor")
for
Splunk Licenses**

Contract Number: MA 5200 NC210000067

The City accepts the Contractor's Offer for the above requirement and enters into the following Contract. This Contract is between Sirius Computer Solutions, Inc. having offices at 10100 Reunion Place, Suite 500, San Antonio, Texas 78216 and the City, a home-rule municipality incorporated by the State of Texas.

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Document
- 1.1.2 Supplemental Terms, incorporated herein and attached as Exhibit A hereto.
- 1.1.3 DIR-TSO-4288, incorporated herein by reference.
- 1.1.4 Contractor's Offer, incorporated herein and attached as Exhibit B hereto.

1.2 Compensation.

The Contractor shall be paid a total Not-to-Exceed amount of \$1,465,071.70 for the Contract term.

1.3 Term of Contract.

This Contract shall remain in effect for a term of 36-months or the City terminates the Contract.

- 1.4 Designation of Key Personnel.** The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

| | <u>Name</u> | <u>Phone Number</u> | <u>Email Address</u> |
|---|---------------------|---------------------|--|
| Contractor Contract Manager | Mike Herzog | 512-626-7499 | mike.herzog@sirius.com |
| City Contract Manager | Sharif Washington | 512-974-1137 | Sharif.Washington@austintexas.gov |
| City Contract Administrator, Procurement Specialist | Daniel Dellemonache | 512-974-2981 | Daniel.Dellemonache@austintexas.gov |

1.5 **Invoices.** The City’s preference is to have invoices emailed to CTMAPInvoices@austintexas.gov

For questions regarding your invoice/payment please contact the City Contract Manager.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.
In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

SIRIUS COMPUTER SOLUTIONS, INC.

Luke Niemiro

DocuSigned by: **thorized Person**
Luke Niemiro
451E24C8304948A...

Signature

Managing Contracts Attorney

Title:

9/21/2021 | 12:59 CDT

Date:

ST

CITY OF AUSTIN

Daniel Dellemonache Digitally signed by Daniel Dellemonache
Date: 2021.09.24 09:00:44 -05'00'

Printed Name of Authorized Person

Signature

Procurement Specialist IV

Title:

9/24/2021

Date:

EXHIBIT A
SUPPLEMENTAL TERMS – COOPERATIVE

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

1. GENERAL

1.1 INDEFINITE QUANTITY:

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

1.2 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

1.3 PAYMENT:

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.
- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. Delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
 - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. Damage to the property of the City or the City's agents, employees or Contractors, which is not covered by insurance required to be provided by the Contractor;

- v. Reasonable evidence demonstrates that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
 - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of notice of non-appropriation.

1.4 AUDITS AND RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
 - i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

1.5 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:

- i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
- ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
- iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.6 ADVERTISING:

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

1.7 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

1.8 NON-DEBARMENT CERTIFICATION:

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs. The Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

1.9 EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.
- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.10 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any “company” for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms “company” and “boycott Israel” have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a “company”, then the Contractor verifies that he:
 - i. does not “boycott Israel”; and
 - ii. will not “boycott Israel” during the term of this Contract.
- C. The Contractor’s obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

1.11 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

1.12 INSURANCE:**A GENERAL INSURANCE REQUIREMENTS:**

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P.O. Box 1088
Austin, Texas 78767
OR
PURInsuranceCompliance@austinTexas.gov
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or

decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
 - v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
 - vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
 - vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
 - viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
 - ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
 - x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
 - xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
 - xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
 - xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

- i. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

(1) The policy shall contain the following provisions:

- Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
- Independent Contractors coverage (Contractor/Subcontracted work);
- Products/Completed Operations Liability for the duration of the warranty period;
- If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.

- (2) The policy shall also include these endorsements in favor of the City of Austin:
- Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
- (3) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

- ii. **Professional Liability/Technology Errors and Omissions Insurance**: The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.
- iii. **Cyber Liability Insurance**: Coverage of not less than \$1,000,000 each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements**: The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

EXHIBIT B



Headquarters:
10100 Reunion Place, Suite 500
San Antonio, Texas 78216
www.siriuscom.com

SOLUTION PROPOSAL

Prepared for:

CITY OF AUSTIN, STATE OF TEXAS
301 W 2ND ST
AUSTIN, TEXAS 78701-3906
UNITED STATES

Client Executive:

Mike Herzog
+1 (512) 626-7499
mike.herzog@siriuscom.com

Proposal Number: Q-00202819
Proposal Date: 09/09/2021
Expires: 10/15/2021
Description:
Currency: USD

Client Executive
Mike Herzog
+1 (512) 626-7499
mike.herzog@siriuscom.com

Proposal Number Q-00202819
Proposal Date 09/09/2021
Expires 10/15/2021
Description
Attn

CITY OF AUSTIN, STATE OF TEXAS
301 W 2ND ST
AUSTIN, TEXAS 78701-3906
UNITED STATES



Headquarters:
10100 Reunion Place, Suite 500
San Antonio, Texas 78216
www.siriuscom.com

| Year 1 | | | | | |
|------------------|---|-----|------------|------------|--------------|
| Part # | Description | Qty | Start Date | End Date | Ext. Price |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 300GB/day | 1 | | 12/31/2021 | \$38,042.59 |
| ES-T-LIC-ST | SPLUNK ENT SECR TERM LIC W STD SUCCESS PLAN 20 GB/DAY E-DEL Comments: 300GB/day | 1 | 09/30/2021 | 12/31/2021 | \$11,261.41 |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 325GB/day | 1 | | 12/31/2021 | \$41,212.79 |
| ES-T-LIC-ST | SPLUNK ENT SECR TERM LIC W STD SUCCESS PLAN 20 GB/DAY E-DEL Comments: 325GB/day | 1 | | 12/31/2021 | \$12,199.87 |
| Year 1 Subtotal: | | | | | \$102,716.66 |
| Year 2 | | | | | |
| Part # | Description | Qty | Start Date | End Date | Ext. Price |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 300GB/day | 1 | 01/01/2022 | 12/31/2022 | \$149,306.93 |
| ES-T-LIC-ST | SPLUNK ENT SECR TERM LIC W STD SUCCESS PLAN 20 GB/DAY E-DEL Comments: 300GB/day | 1 | 01/01/2022 | 12/31/2022 | \$44,198.02 |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 325GB/day | 1 | 01/01/2022 | 12/31/2022 | \$161,749.17 |
| ES-T-LIC-ST | SPLUNK ENT SECR TERM LIC W STD SUCCESS PLAN 20 GB/DAY E-DEL Comments: 325GB/day | 1 | 01/01/2022 | 12/31/2022 | \$47,881.19 |
| SE-P-ST | SPLUNK ENTERPRISE - STD SUP E- DELIVERY Comments: 200 GB/day; Entitlement = E-0007731 | 1 | 01/01/2022 | 12/31/2022 | \$56,038.13 |
| ES-P-ST | SPLUNK ENTERPRISE SECURITY - S TD SUP E-DELIVERY Comments: 200 GB/day; Entitlement = E-0007731 | 1 | 01/01/2022 | 12/31/2022 | \$13,285.19 |



| | | | | | |
|-------------------------|---|---|------------|------------|---------------------|
| SE-P-ST | SPLUNK ENTERPRISE - STD SUP E- DELIVERY Comments: 100 GB/day; Entitlement = E-0016424 | 1 | 01/01/2022 | 12/31/2022 | \$29,181.86 |
| ES-P-ST | SPLUNK ENTERPRISE SECURITY - S TD SUP E-DELIVERY Comments: 100 GB/day; Entitlement = E-0016424 | 1 | 01/01/2022 | 12/31/2022 | \$9,727.29 |
| SE-P-ST-R | SPLUNK ENTERPRISE- STD SUPPORT RNWL E-DELIVERY Comments: 120 GB/day ; Entitlement = E-0007733 | 1 | 01/01/2022 | 12/31/2022 | \$29,585.62 |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 80 GB/day | 1 | 01/01/2022 | 12/31/2022 | \$51,145.90 |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 100GB/day | 1 | 01/01/2022 | 12/31/2022 | \$42,790.15 |
| ES-T-LIC-ST | SPLUNK ENT SECR TERM LIC W STD SUCCESS PLAN 20 GB/DAY E-DEL Comments: 200GB/day | 1 | 01/01/2022 | 12/31/2022 | \$22,648.07 |
| SE-S-CLD-ST | SPLUNK CLOUD SUB W STD SUCCESS PLAN GB/DAY Comments: 20GB/day | 1 | 01/01/2022 | 12/31/2022 | \$23,640.00 |
| Year 2 Subtotal: | | | | | \$681,177.52 |

| Year 3 | | | | | |
|---------------|---|------------|-------------------|-----------------|-------------------|
| Part # | Description | Qty | Start Date | End Date | Ext. Price |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 300GB/day | 1 | 01/01/2023 | 12/31/2023 | \$149,306.93 |
| ES-T-LIC-ST | SPLUNK ENT SECR TERM LIC W STD SUCCESS PLAN 20 GB/DAY E-DEL Comments: 300GB/day | 1 | 01/01/2023 | 12/31/2023 | \$44,198.02 |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 325GB/day | 1 | 01/01/2023 | 12/31/2023 | \$161,749.17 |
| ES-T-LIC-ST | SPLUNK ENT SECR TERM LIC W STD SUCCESS PLAN 20 GB/DAY E-DEL Comments: 325GB/day | 1 | 01/01/2023 | 12/31/2023 | \$47,881.19 |
| SE-P-ST | SPLUNK ENTERPRISE - STD SUP E- DELIVERY Comments: 200 GB/day; Entitlement = E-0007731 | 1 | 01/01/2023 | 12/31/2023 | \$56,038.13 |
| ES-P-ST | SPLUNK ENTERPRISE SECURITY - S TD SUP E-DELIVERY Comments: 200 GB/day; Entitlement = E-0007731 | 1 | 01/01/2023 | 12/31/2023 | \$13,285.19 |
| SE-P-ST | SPLUNK ENTERPRISE - STD SUP E- DELIVERY Comments: 100 GB/day; Entitlement = E-0016424 | 1 | 01/01/2023 | 12/31/2023 | \$29,181.86 |



| | | | | | |
|----------------------------|---|---|------------|------------|-----------------------|
| ES-P-ST | SPLUNK ENTERPRISE SECURITY - S TD SUP E-DELIVERY Comments: 100 GB/day; Entitlement = E-0016424 | 1 | 01/01/2023 | 12/31/2023 | \$9,727.29 |
| SE-P-ST-R | SPLUNK ENTERPRISE- STD SUPPORT RNWL E-DELIVERY Comments: 120 GB/day ; Entitlement = E-0007733 | 1 | 01/01/2023 | 12/31/2023 | \$29,585.62 |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 80 GB/day | 1 | 01/01/2023 | 12/31/2023 | \$51,145.90 |
| SE-T-LIC-ST | Splunk Enterprise - Term License with Standard Success Plan - GB/DAY E-Delivery Comments: 100GB/day | 1 | 01/01/2023 | 12/31/2023 | \$42,790.15 |
| ES-T-LIC-ST | SPLUNK ENT SECR TERM LIC W STD SUCCESS PLAN 20 GB/DAY E-DEL Comments: 200GB/day | 1 | 01/01/2023 | 12/31/2023 | \$22,648.07 |
| SE-S-CLD-ST | SPLUNK CLOUD SUB W STD SUCCESS PLAN GB/DAY Comments: 20GB/day | 1 | 01/01/2023 | 12/31/2023 | \$23,640.00 |
| Year 3 Subtotal: | | | | | \$681,177.52 |
| Extended Subtotal: | | | | | \$1,465,071.70 |
| Total Client Price: | | | | | \$1,465,071.70 |

Proposal Comments:

SAAS BILLING FREQUENCY: ANNUAL

SAAS TERM: SEE ABOVE

SAAS WILL TERMINATE AT END OF TERM. TO AVOID A DISRUPTION OF SERVICE, A NEW ORDER MUST BE PLACED PRIOR TO THE ORIGINAL TERM'S EXPIRATION.

Terms and Conditions:

Unless otherwise noted, price does not include shipping, handling or applicable tax which may be added at the time of invoice. All quoted shipping and handling charges or tax amounts are estimates only, and are subject to change upon invoicing. In the event CITY OF AUSTIN, STATE OF TEXAS ("Customer") requests expedited shipping, whether such request is made before or after acceptance of this Solution Proposal ("Proposal") by Customer, the price stated above for shipping and handling is subject to change.

This Proposal is subject to the Terms and Conditions below and/or any referenced agreements. Acceptance of this Proposal by an authorized representative of Customer will be deemed the equivalent of a Customer Purchase Order, which will authorize Sirius Computer Solutions, Inc. ("Sirius") to order the products listed in this Proposal. Until Sirius receives and accepts a Purchase Order or a signed copy of this Proposal for the solution proposed, pricing provided in this Proposal is subject to change based on manufacturer's pricing schedule. The products contained on this Proposal may be delivered to the Customer through multiple shipments based upon supplier availability, and Customer agrees to pay one or more partial payments of the total purchase price stated above for any such partial shipment of products.

Notwithstanding anything to the contrary in the Terms and Conditions below and/or any referenced agreements, Customer hereby agrees that the products listed on this Proposal are noncancelable, nonreturnable, and nonrefundable except with the express written permission of Sirius.

This Proposal shall be governed by the following agreement: DIR-TSO-4288 - Splunk.

The provision of the maintenance services contained on this Proposal (the "Maintenance Services") will be controlled by the terms and conditions of the applicable manufacturer and/or maintenance provider (hereinafter the "Provider"). If Customer removes a covered device from productive use and requests cancellation of the Maintenance Services on that device, in accordance with the Provider's terms and conditions, Customer must notify Sirius by email at the following address: OPU@siriuscom.com. Should Customer fail to send the request to the address above, processing of the cancellation shall be delayed and any associated credit with the cancellation may be reduced.



Notwithstanding any provision to the contrary contained in any agreements between Sirius and Customer or this Proposal, all terms of use for the Splunk products (the "Subscriptions") contained on this Proposal will be controlled by the terms and conditions at www.splunk.com/view/SP-CAAAMB6. Further, Customer acknowledges that the Subscriptions contained on this proposal may be adjusted by Customer through Sirius, or the manufacturer, if applicable, including but not limited to subscription renewals, extensions, and other add-ons, and Customer will be invoiced for any such adjustments. Customer acknowledges that the Subscriptions may be subject to recurring billing based upon Customer's then current usage of the Subscriptions. For purposes of clarity, the termination of any referenced Agreement(s) will not terminate any active Subscriptions contained herein.

The parties expressly agree that the following limitation shall replace and supercede all other such clauses that may be in effect between the parties in regards to claims originating from the Subscriptions. In no event shall Sirius be liable to Customer for any incidental, indirect, exemplary, special, consequential, or punitive damages that may be suffered or incurred by Customer or any person or entity affiliated, related, or associated with Customer, even if advised of the possibility of such damages or such damages result from the performance, attempted performance, or non-performance of the Subscriptions, including without limitation, damages resulting from use of the Subscriptions or inability to use the Subscriptions, loss or corruption of or damage to data, cost of capital, loss of business reputation or opportunity, or any claim or demand against Customer by any third party, whether under theory of contract, tort (including negligence) or otherwise. Sirius' liability for the Subscriptions to be provided hereunder or otherwise arising out of the Subscriptions to be provided hereunder, regardless of the form of action, whether under theory of contract, tort (including negligence) or otherwise, shall not exceed one (1) year's fees paid or payable by Customer to Sirius for the Subscriptions to be provided hereunder.

For the purposes of determining the taxability of the Subscription items, the Subscriptions will be deemed to have been delivered to the location identified as the shipping address for these Subscriptions. If the Subscriptions include any tangible items delivered as a part of the Subscriptions, these items will be considered inconsequential for tax purposes and the relevant state law will apply.



Accepted by:

CITY OF AUSTIN, STATE OF TEXAS

Signature of Authorized Representative

Printed Name

Title of Authorized Representative

Date Signed

Ship to Contact (Name, Phone, & Email)

Ship to Address

Approved by:

Sirius Computer Solutions, Inc.

Signature of Authorized Representative

Printed Name

Title of Authorized Representative

Date Signed

Bill to Contact (Name, Phone, & Email)

Bill to Address

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR SERVICES
Sirius Computer Solutions, Inc.

1 Introduction

A. Parties

This Contract for End-User IT Outsourcing 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 Sirius Computer Solutions, Inc., (hereinafter “Successful Respondent”), with its principal place of business at 10100 Reunion Place, Suite 500, San Antonio, Texas 78216.

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-CPO-TMP-442, on 10/09/2020, for End-User IT Outsourcing. Upon execution of this Contract, a notice of award for RFO DIR-CPO-TMP-442 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows:

- i. this Contract;
- ii. Appendix A, Standard Terms and Conditions;
- iii. Appendix B, Successful Respondent’s Historically Underutilized Businesses Subcontracting Plan;
- iv. Appendix C, Statement of Work;
- v. Appendix D, Master Operating Lease Agreement;
- vi. Appendix E, Master Lease Agreement;
- vii. Exhibit 1, Successful Respondent’s Response to RFO DIR-CPO-TMP-442, including all Addenda;
- viii. and Exhibit 2, RFO DIR-CPO-TMP-442, including all Addenda;

are incorporated by reference and constitute the entire agreement between DIR and Successful Respondent governing purchase transactions. 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 Appendix D, the Appendix E, then

Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2 Term of Contract

The initial term of this Contract shall be two (2) years commencing the last date of approval by DIR and Successful Respondent, with one (1) optional two-year renewal and one (1) optional one-year renewal. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party sixty (60) days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

3 Option to Extend

The Successful Respondent agrees that DIR may require continued performance, not including termination assistance, beyond the initial or any renewal Contract term, of any of the within described services at the rates specified in the Contract. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed four (4) calendar months. Such extension of services shall be subject to the requirements of the Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written notice to the Successful Respondent.

4 Service Offerings

This Contract is for services only. No hardware or software products may be sold under this Contract. Any products needed to deliver final services must be procured through another contract vehicle.

Services available under this Contract are limited to the End-User IT Outsourcing Services as specified in Table 1 below. Successful Respondent may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Successful Respondent may not add services which were not included in the Successful Respondent's response to the solicitation described in Section 1.B above.

Table 1

| Management Services | The management of customer owned equipment or vendor provided equipment. |
|------------------------------|---|
| Provisioning of Equipment | <p>This category includes any information technology equipment that may be made commercially available within the current and future technology marketplace that addresses a business need of a Customer. Equipment includes, but is not limited to: desktops/workstations, notebooks/portables, mobility devices, end-user support servers, storage area networks, networking, software, and peripherals. Services shall include, but not be limited to: management of equipment procurement, equipment configuration management, and provisioning of equipment. Successful Respondent must be capable of provisioning equipment using standard configurations developed by Customer. Successful Respondent shall be responsible for bearing the cost of acquisition or lease costs that may be applicable in the procurement process and for IT equipment that may be required by a Customer.</p> |
| Desktop Outsourcing Services | <p>This category includes services related to desktop computers (or laptops acting in the role of desktops), desktop hosting servers, the underlying network infrastructure, the processes and the organization.</p> <p>Desktop support services include:</p> <ul style="list-style-type: none"> • Deskside dispatch • Hardware break/fix • Installations, moves, adds and changes (IMAC) • Remote server • LAN/WAN (where applicable) • Shrink-wrapped software (dispatched efforts) • First-level application (dispatched efforts) • Enterprise-specific (where required) • IT asset inventory maintenance and process controls • Backup and recovery processes • Patch management • Output management • Hardware standards establishment • Service desk (often included) |

| Support Services | Services provided in the course of providing Management Services. |
|---|---|
| Service Desk | <p>Manage and supply a toll-free telephone number, email address, or web-based application for a Customer to report maintenance issues, trouble-tickets, and request other how-to assistance as necessary. Process must include a timely confirmation of receipt of all Customer reports and a resolution status of all service requests submitted. IT service desk is defined as the provision of internal end-user support for all IT services and includes:</p> <ul style="list-style-type: none"> • Labor, facilities, systems, processes, management and connectivity for service desk support • First-level and second-level support • Problem categorization and logging • Problem tracking and escalation • Problem resolution • Remote access and resolution |
| On Site Support & Moves/Adds/Changes (MAC) Services | <p>Provide day-to-day technical on-site support services, to include, but not be limited to: option of Successful Respondent staff residing at a Customer location, assisting with complex problem identification, resolving complex issues which cannot be resolved by assistance of the help desk, installation of emergency hardware/software fixes, troubleshooting, physical relocation of equipment, continuing equipment modifications or upgrades, installation/de-installation, packing/unpacking of equipment, and swaps/replacement of equipment. Successful Respondent shall be capable of providing the services described for volume-based projects that affect several end-users as may be necessary throughout the term of a Customer's Supplemental Agreement.</p> |
| Remote Support Services | <p>Manage and provide remote support to "take over" and support a piece of equipment from a centralized location by Successful Respondent personnel. Successful Respondent shall provide phone support to assist in resolution of problems from a location that is remote to the end-user Customer.</p> |
| Standard and Ad Hoc Reporting and Documentation | <p>Produce various types of reports via online or hard copy as may be required by a Customer. These may include, but not be limited to: number of problems/calls logged, number of dispatch calls, and resolution time frames. Successful Respondent shall allow a Customer's authorized end-user to have electronic access to view and query Successful Respondent's standard reports.</p> |

| Technology Services | Specific applications or technology centered processes. |
|---------------------------------------|---|
| Mobility | <p>This category defines mobility as the provision of internal end-user support for all mobile functionality.</p> <p>The mobile services include:</p> <ul style="list-style-type: none"> • Labor, facilities, systems, processes, management and connectivity • Managing mobile devices, including bring your own device (BYOD) to securely work with the customer's network and base systems • Managing mobile device connectivity service • Problem categorization and logging • Problem tracking and escalation • Problem resolution |
| Hosted Virtual Desktop (HVD) Services | HVD service that can access applications from a centralized server, combined with a lower-cost desktop solution as the thin client. |
| Network Management Services | Manage and provide services for network related issues, to include, but not be limited to: connectivity troubleshooting, eliminating bottlenecks, and monitoring. For DIR eligible telecom Customers, telecommunications connectivity services will be achieved through the DIR consolidated telecommunications system, TEX-AN. |
| Software Services | Manage services for software to include, but not be limited to: software configuration management, patches, automated distribution, imaging creation, and imaging implementations |
| Security Services | Manage security services as applicable to the equipment as described within Item 1, Provisioning of Equipment, and, Procurement Services, that may be provided. To include, but not be limited to: firewalls, passwords, and data protection, equipment shipped in a default secure configuration, and option to keep a hard drive is required within the applicable equipment configuration. DIR reserves the right to promulgate standards in relation to security services and such standards will be discussed with Successful Respondents selected for negotiation. |

Customers shall order the Services by execution of a Statements of Work (SOW). Successful Respondent s shall respond by demonstrating qualifications and experience for each engagement. At a minimum, each SOW will describe the service levels. From responses Customer will determine best value. The Sample SOW format and service level examples are shown in Appendix C. Services that can be included to provide End-User IT Outsourcing solutions are set forth below. Some services may be unavailable as service components, at the discretion of the Successful Respondent.

5 Pricing

Pricing to the DIR Customer shall be as set forth in **Appendix A, Standard Contract Terms and Conditions, Section 8, Pricing, Purchase Orders, Invoices and Payment**, and as limited by **Appendix C, Statement of Work**, and shall include the DIR Administrative Fee.

6 DIR Administrative Fee

- A) The administrative fee to be paid by the Successful Respondent to DIR based on the dollar value of all sales to Customers pursuant to this Contract three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.
- B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Successful Respondent without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

7 Notification

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

If sent to the State:

Hershel Becker or Successor in Office
Chief Procurement Officer
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700

If sent to the Successful Respondent:

Phyllis (PJ) Byrd
Sirius Computer Solutions, Inc.
10100 Reunion Place, Suite 500
San Antonio, Texas 78216
Phone: (210) 369-0617
Fax: (866) 313-0960
Email: phyllis.byrd@siriuscom.com

8 Software License, Statement of Work and Leasing Agreements

A) Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Successful Respondent 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. It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

B) Master Operating Lease Agreement

DIR and Successful Respondent hereby agree that Successful Respondent is authorized to utilize the Master Operating Lease Agreement in Appendix D of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

C) Master Lease Agreement

DIR and Successful Respondent hereby agree that Successful Respondent is authorized to utilize the Master Lease Agreement in Appendix E of this Contract for DIR authorized entities as Lessees that are not Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions. Texas State Agencies that have the requisite capital authority and who are not required to utilize such authority via the Texas Public Finance Authority may or may not be eligible to utilize the Master Lease Agreement; each such agency must confer with its own counsel to make this determination.

D) Statement of Work Template

Services provided under this Contract shall be in accordance with the Statement of Work (SOW) Template as set forth in Appendix C of this Contract. No changes to the SOW terms and conditions may be made unless previously agreed to by Successful Respondent and Customer. If utilizing the SOW Template, the Successful Respondent and Customer may agree to terms and conditions that do not diminish or lessen the rights or protections of the Customer or the responsibilities or liabilities of the Successful Respondent .

E) Conflicting or Additional Terms

- 1) In the event that conflicting or additional terms in SOW or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.
- 2) In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Successful Respondent product or service offering after the effective date of the update; and, provided further, that, if Successful Respondent has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Successful Respondent's initial response shall apply to that purchase unless Successful Respondent directly informs Customer of the update before the purchase is consummated.
- 3) In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.
- 4) Successful Respondent shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.
- 5) If Successful Respondent attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Successful Respondent or Successful Respondent and Customer, and Successful Respondent will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Successful Respondent.
- 6) The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

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 Successful Respondent.

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

Sirius Computer Solutions, Inc.

Authorized By: Signature on File

Name: Phyllis Byrd

Title: Director, Public Sector

Date: 03/29/2021

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

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 03/31/2021

Office of General Counsel: Signature on File 03/30/2021



Department of Information Resources

End-User IT Outsourcing Services

Appendix A

Standard Contract Terms and Conditions

Awarded as a result of: Request for Offer DIR-CPO-TMP-442

Version 1.1

DIR-CPO-4765 Appendix A
Standard Terms and Conditions for Product and Services Contracts

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

1. Contract Scope .

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall provide the products and 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 Fulfillers and/or Reseller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees.

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

3. Definitions

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

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

- used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

- B. **Compliance Check** – an audit of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. **Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. **CPA** – refers to the Texas Comptroller of Public Accounts.
- E. **Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. **Order 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. **Reseller** – any third party approved by Vendor to sell to eligible Customers under this Contract. Vendor will flow this Contract’s terms and conditions to its Resellers under his Contract, except that pricing shall be as follows: Vendor offers pricing to its Reseller(s) and such Resellers shall resell to the eligible Customers products under this Contract at or below the price(s) in Appendix C, Pricing Index, of this Contract. Resellers may receive Purchase Orders and fulfill them in their own name. All terms and conditions of this Contract shall apply to both Vendor and Reseller.
- H. **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).
- I. **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) DIR may amend the contract upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) as necessary to satisfy a procedural change due to DIR system upgrades or additions.
- 3) 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 and Reseller 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.

4) 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, price (subject to the maximum prices set forth in Appendix C), and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

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

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

D. Assignment

1) DIR may assign the Contract to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

2) Vendor may assign the Contract with prior written approval to a subsidiary, parent company, affiliate, or successor. Assignment of the Contract by vendor under the above terms shall require written notification by Vendor and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor or Order Filler or Reseller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

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

H. Proof of Financial Stability

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

I. Data Location

Regardless of any other provision of this Contract or its incorporated or referenced documents, all of the data for State of Texas Customers identified by the State as requiring their data to remain in the continental United States shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically request otherwise. For all local governments and education customers within the State of Texas, as well as Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. NOTE: CLIENTS SHOULD CONSIDER WHETHER THEY REQUIRE CONTINENTAL US-ONLY DATA LOCATION AND HANDLING AND MAKE VENDOR AWARE OF THEIR REQUIREMENTS.

5. Intellectual Property Matters

A. Definitions

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

conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

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

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

4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.

5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor

and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

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

E. Confidentiality.

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

F. Injunctive Relief.

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

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such

written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

1) Upon request, and prior to a DIR customer purchase, Vendors must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such competed ACRs already exist, and there have been no changes to the product / service since the time of the original document completion.

Vendors claiming that a proposed product or family of products is exempt from accessibility requirements must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.

2) Upon request, and prior to a DIR customer purchase for IT development services, Vendors must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Vendor's capability or ability to produce accessible electronic and information resources.

Additionally, vendors must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.

3) Upon request, and prior to a DIR customer purchase for COTS products, or IT development services Vendors must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment.

Also upon request, vendors must provide additional documentation that supports the information contained in the formentioned completed forms in #1,2,3. Examples may include but are not limited to executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

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

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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

B. Use of Order Fulfillers and Resellers

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

1) Designation of Order Fulfillers and Resellers

a) Vendor may designate Order Fulfillers and Resellers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers and Resellers, 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 Fulfiler and Reseller information: Order Fulfiler or Reseller name, Order Fulfiler or Reseller business address, Order Fulfiler or Reseller CPA Identification Number, Order Fulfiler or Reseller contact person email address and phone number.

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

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

d) Vendor shall have the right to qualify Order Fulfillers and Resellers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers and Resellers 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 Fulfiler or Reseller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiler and Reseller List

Vendor may add or delete Order Fulfillers and Resellers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers and Resellers, 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 Fulfillers and Reseller information listed in Section 7.B.1.a above.

3) Order Fulfiler and Reseller Pricing to Customer

Order Fulfiler and Reseller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as

set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall only be offered by Order Fulfillers and Resellers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

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

D. Customer Site Preparation

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

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

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

- a) the products and services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP;
- e) MSRP or DIR Customer price;
- f) designated Order Fulfillers and Resellers;
- g) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers and Resellers;
- h) instructions for obtaining quotes and placing Purchase Orders;
- i) warranty policies;
- j) return policies;
- k) links to manufacturer Voluntary Product Accessibility Template (VPAT) for applicable products awarded;
- l) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- m) a link to the DIR "Cooperative Contracts" webpage; and
- n) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

2) Accurate and Timely Contract Information

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

3) Webpage Compliance Checks

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

4) Webpage Changes

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

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

F. DIR Logo

Vendor and Order Fulfiller and Reseller 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 or Reseller 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 and Reseller Logo

If DIR receives Vendor's or Order Fulfiller's or Reseller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's and Reseller'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 or Reseller'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 or Reseller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller and Reseller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers and Resellers may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's and Reseller'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 and Resellers 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 and Reseller's booth.

I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers and Resellers will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include reporting requirements. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference or by webinar, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers and Resellers for attendance at the meeting.

J. Performance Review Meetings

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

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Customer Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1

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

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

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

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

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not

exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller or Reseller. Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfillers or Reseller when accepted by Vendor or Order Fulfiller or Reseller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Invoices shall be submitted by the Vendor or Order Fulfiller or Reseller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Vendor or Order Fulfiller or Reseller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

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

3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller or Reseller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

9. Contract Administration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

2) Vendor Contract Manager

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

B. Reporting and Administrative Fees

1) Reporting Responsibility

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

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the

previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

- a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- b) Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

- a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.
- b) DIR may change the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment.
- c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

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

of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

C. Records and Audit

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller and/or Reseller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers or Resellers and the requirement to cooperate is included in any subcontract or Order Fulfillers or Reseller 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 and Resellers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's or Reseller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers and/or Resellers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfiller and/or Resellers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers and/or Resellers 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 and/or Reseller personnel familiar with the Vendor's and/or Order Fulfiller's and/or Reseller'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 and/or Reseller shall provide adequate office space to DIR staff during the performance of Compliance Check. DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

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

D. Contract Administration Notification

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

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

10. Vendor Responsibilities

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W

A. Indemnification

1) INDEPENDENT CONTRACTOR

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

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers or Resellers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

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

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

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR

WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor certifies on behalf of Vendor and its designated Order Fulfillers or Resellers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

- (viii) as of the effective date of the Contract, are not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and

- (xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.
- (xx) represent and warrant with Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate

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

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

D. Education Department General Administrative Regulations (EDGAR)

The Education Department of General Administrative Regulations (EDGAR) are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014. EDGAR encourages the use of cooperative agreements for procurement or use of common or share goods and services in order to foster greater economy and efficiency. DIR uses an open market competitive procurement process to award contracts as required by Texas Government Code 2054 and 2157. If Vendor provides evidence of its EDGAR compliance that DIR to the best of information and belief, finds to be satisfactory, then DIR may identify Vendor as certifying that all or a portion of Vendor's listings are EDGAR eligible, and DIR may then permit Vendor to so identify all or part of its offerings on Vendor's DIR website. In such cases, upon request from eligible DIR customer, Vendor must complete EDGAR certification affirmation forms to satisfy customer requirement.

E. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Filler and Reseller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

F. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in

compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

G. Use of Subcontractors

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

H. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

I. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

J. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and/or Order Fulfiller and/or Reseller 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 and/or Reseller 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 and/or Reseller 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 and/or Reseller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

K. Background and/or Criminal History Investigation

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's and/or Reseller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer.. Should any employee or subcontractor of the Vendor and/or Order Fulfiller and/or Reseller 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.

L. Limitation of Liability

For any claims or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

M. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

N. Prohibited Conduct

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

O. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer.

If Vendor's services contracted under this Contract will not require Vendor to perform work on Customer's premises, or to use employer vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Vendor may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing a *Certification of Off-Premise Customer Services*, which shall serve to meet the insurance requirements.

All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

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

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

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

- a) Waiver of Subrogation; and
- b) Additional Insured.

P. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

Q. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

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

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and
- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

R. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

S. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

U. Deceptive Trade Practices; Unfair Business Practices

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

2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

V. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

W. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

X. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

Y. Cybersecurity Training

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency or institution of higher education, if Vendor, or a subcontractor, officer, or employee of Vendor, will have access to a state computer system or database, then Vendor shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by Customer state agency. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Vendor shall verify to the Customer state agency or institution of higher education completion of the program by each such officer, employee, or subcontractor.

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

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

3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

In all instances of termination or expiration, Vendor shall be required to provide a list of all Purchase Orders, and Purchase Order detail that are open as of the date of termination or expiration. Further, Vendor shall continue to report sales and pay administrative fees for the duration of all such Purchase Orders.

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

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

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

b) Purchase Order

Customer or Order Fulfiller or Reseller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller or Reseller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller or Reseller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

7) Vendor or Order Fulfiller or Reseller Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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

C. Force Majeure

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

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

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

B. Handling of Written Complaints

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

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

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

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