

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**Executive Information Systems, LLC**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Executive Information Systems, LLC (hereinafter "Vendor"), with its principal place of business at 6901 Rockledge Drive, Suite 600, Bethesda, Maryland 20817.

**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-TSO-TMP-416, on 2/26/2018, for Software Products, Software as a Service, and Enterprise Resource Planning Software Modules Products and Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-416 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: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Software Product Terms; Appendix E, EIS License Attachment; Appendix F, Remote Managed Software and Services; Appendix G, Hosting Services; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-416, including all addenda; and Exhibit 2, DIR-TSO-TMP-416, including all addenda are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, Appendix G, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 on the last date of approval by DIR and Vendor, with two (2) optional two-year renewals. 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 60 days in advance of the renewal date stating that the party

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wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

### **3. Product and Service Offerings**

#### **A. Products**

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

#### **B. Services**

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

#### **C. Emerging Technologies and Future Acquisitions**

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products and services that are within the scope the solicitation described in Section 1.B above. Vendor may propose such products and services throughout the term of the contract. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR's sole discretion and any decision will be final. In addition, Texas DIR and Vendor may mutually agree to add future acquisitions of Vendor to the contract. Subsequent terms of the acquisition(s) and pricing will be mutually agreed upon in writing and amended under the contract.

### **4. Pricing**

Pricing to the DIR Customer shall be as set forth in 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.

### **5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is 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 Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

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**6. Notification**

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

If sent to the State:

Kelly A Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-1647  
Facsimile: (512) 475-4759  
Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

Chris DeLauter  
Executive Information Systems, LLC  
6901 Rockledge Drive, Suite 600  
Bethesda, MD 20817  
Phone: (301) 581-1085  
Email: [ddelauter@execinfosys.com](mailto:ddelauter@execinfosys.com)

**7. Software License and Service Agreements****A. Software License Agreement**

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D and Appendix E of this Contract. No changes to the terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D or Appendix E; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Agreements, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfiller shall make the Agreements terms and conditions available to all Customers at all times.

2) Compliance with the Agreements is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Agreements. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Agreements terms and conditions.

**B. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine**

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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.

**C. Service Agreement**

Services provided under this Contract shall be in accordance with the Service Agreements as set forth in Appendix F and Appendix G of this Contract. No changes to the Agreements terms and conditions may be made unless previously agreed to by Vendor and DIR.

**D. Conflicting or Additional Terms**

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements 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.

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 Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

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.

Vendor 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.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor 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 Vendor.

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 or Publisher.

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

**A. Appendix A, Section 3.A. Definitions,** is hereby amended as follows:

Customer - any Texas state agency, unit of local government, the Lower Colorado River Authority a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.

**B. Appendix A, Section 4.B.2, Modification of Contract Terms and/or Additions** is hereby amended as follows:

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 Fulfiler 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. Unless otherwise stated in a Purchase Order, the products offered by Vendor may only be installed on hardware located within the state of Texas.

**C. Appendix A, Section 5, Intellectual Property,** is hereby deleted and replaced in its entirety as follows:

This Contract does not contemplate, authorize, or support acquisition of custom software products or custom services. If Vendor and Customer seek to contract for such custom product or service, they must use a separate contract or seek amendment with DIR of this Contract. If DIR and Vendor decide to authorize customized software or hardware products, then the intellectual property language will be negotiated and applied.

**D. Appendix A, Section 6.A.2, Electronic and Information Resources Accessibility Standards, as Required by 1TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only),** is hereby amended and as follows:

Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act). Pursuant to this section, Vendor will provide VPATs where available. The State will direct all VPAT requests to the following email address: [accessibility@sas.com](mailto:accessibility@sas.com).

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**E. Appendix A, Section 6.B.3, Purchase of Commodity Items (Applicable to State Agency Purchases Only),** is hereby amended as follows:

After award of a Contract, Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts with exception to Orders that were established prior to a Contract award. Institutions of higher education are exempt from this Subsection 6.B.

**F. Appendix A, Section 10.K, Limitation of Liability,** is hereby amended as follows:

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 (arising in contract or tort), even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages relating to all matters covered by the Contract or use of the Software, or any Work Product resulting from any services delivered hereunder, shall be limited to the greater of (a) \$1 Million Dollars, or (b) three times the license or service fees identified on the purchase order for the specific software product(s) or services at issue during the then-current license period. However, this limitation of Vendor's liability shall not apply to claims of bodily injury, or violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement.

**G. Appendix A, Section 10.N.1, Required Insurance Coverage; Commercial General Liability,** is hereby amended as follows:

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. 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 included as Additional Insureds on Commercial General Liability and Business Automobile Liability 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

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Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance, which must be agreed to by Vendor. 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 included as an additional insured; and
- d) Waiver of Subrogation.

**H. Appendix A, Section 10.N.3, Required Insurance Coverage; Business Automobile Liability Insurance** is hereby amended as follows:

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 provisions in favor of DIR and/or Customer:

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

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

**Executive Information Systems, LLC**

Authorized By: Signature on File

Name: R. Patrick Krause

Title: Vice President

Date: 3/22/2019

**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: 4/4/2019

Office of General Counsel: Signature on File, 3/26/2019



**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

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

**1. Contract Scope**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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

**2. No Quantity Guarantees**

**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 related services will be procured through the Contract.

**3. Definitions**

A. **Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, 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, 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. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

#### **4. General Provisions**

##### **A. Entire Agreement**

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

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

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

##### **C. Invalid Term or Condition**

- 1) To the extent any term or condition in the Contract conflicts with the applicable 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**

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

### **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. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

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

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 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**

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

#### **1) Designation of Order Fulfillers**

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

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

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers 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 their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers 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 Filler from participating in other procurement opportunities offered through DIR.

#### **2) Changes in Order Filler List**

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

#### **3) Order Filler Pricing to Customer**

Order Filler 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 to Customers for sales that pass through the Contract.

**C. Product Warranty and Return Policies**

Order Fulfiller 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 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. 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 or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;
- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- l) 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 may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

## **G. Vendor and Order Fulfiller Logo**

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

## **H. Trade Show Participation**

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

## **I. Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract 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, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

## **J. Performance Review Meetings**

DIR 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 (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in 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.

Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. 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, 84<sup>th</sup> 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 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. 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. 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 and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract 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 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 (15<sup>th</sup>) calendar day of the month following the month of the sale. If the 15<sup>th</sup> 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 (14<sup>th</sup>) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25<sup>th</sup>) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15<sup>th</sup>; DIR closes January sales and notifies Vendor of administrative fee by March 14<sup>th</sup>; Vendor submits administrative fee for January sales by March 25<sup>th</sup>.

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).

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

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of 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 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 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 Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) 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 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 E-Mail Box 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 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 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 the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) Vendor 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.

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

In addition, Vendor understands and agrees that 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. Ability to Conduct Business in Texas**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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

#### **E. 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.

#### **F. 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.

#### **G. 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.

#### **H. 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.

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

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

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

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

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

#### **K. Limitation of Liability**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**



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.

#### **L. 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.

#### **M. 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, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

#### **N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 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. 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.

## O. 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.

## P. 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 Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the 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.

#### **Q. 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.

#### **R. 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.

#### **S. 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.

#### **T. 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.

#### **U. 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.

#### **V. Accessibility of Public Information**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

- 1) Pursuant to S.B. 1368 of the 83<sup>rd</sup> 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.

#### **W. 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 83<sup>rd</sup> Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

### **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**

##### **1) Termination for Non-Appropriation**

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

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

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

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

#### **2) Absolute Right**

##### **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 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 (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 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 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 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 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. 15<sup>th</sup> 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.



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE:** Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

**- - Agency Special Instructions/Additional Requirements - -**

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

## SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Executive Information Systems, LLC (EIS) State of Texas VID #: 15221988601  
Point of Contact: Linda Scharf Phone #: 301-581-4369  
E-mail Address: lscharf@execinfosys.com Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Requisition #: DIR-TSO-TMP-416 Bid Open Date: 02/26/2018

(mm/dd/yyyy)



Enter your company's name here: Executive Information Systems, LLC (EIS)Requisition #: DIR-TSO-TMP-416**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

☒ - *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)

☐ - *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1	SAS software & software specific technical services	%	%	100 %
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☒ - *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☒ - *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Executive Information Systems, LLC (EIS)Requisition #: DIR-TSO-TMP-416**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Executive Information Systems, LLC (EIS)Requisition #: DIR-TSO-TMP-416

**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

N/A

**SECTION 4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature on File

Signature

Linda Scharf

Printed Name

Controller

Title

04/23/2019Date  
(mm/dd/yyyy)**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

# HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: Executive Information Systems, LLC (EIS) Requisition #: DIR-TSO-TMP-416

**IMPORTANT:** If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: 1 Description: SAS software & software specific technical services

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If Yes, continue to SECTION B-4.)

☒ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbldsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
Neos Consulting Group, LLC	1562314260900	03/16/2018	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No
Cooper Consulting Group, LLC	1562314260900	03/16/2018	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No
Aventine Hill Partners Inc.	1264760831900	03/16/2018	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
US Pan Asian American Chamber of Commerce SW	03/16/2018	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Southwest Minority Supplier Development Council	03/16/2018	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: Executive Information Systems, LLC (EIS)

Requisition #: DIR-TSO-TMP-416

## SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: 1 Description: SAS software & software specific technical services

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
SAS Institute Inc	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$ 5,000,000	100 %
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

SAS Institute Inc is not a Texas certified HUB. SAS is a global, privately-owned company that has niche proprietary software and software-specific technical services. These items are not offered by any Texas-certified HUBs.

Executive Information Systems, LLC is THE exclusive government re-seller of SAS's proprietary software and software-specific technical services. No Texas-certified HUB is authorized to resell SAS software. SAS was selected as a subcontractor because they are the industry leader in providing business analytics. SAS is considered a Sole Source.

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

**DIR-TSO-4368**  
**APPENDIX C PRICING INDEX (PER AMENDMENT 1)**  
**EXECUTIVE INFORMATION SYSTEMS**

BRAND	PRODUCT DESCRIPTION	DIR Customer Discount % off MSRP
SAS Institute, Inc	ALL SAS PRODUCTS AND SERVICES EXCEPT AS LISTED BELOW	22%
SAS Institute, Inc	SAS Training Points Each Training Point - 7,350 to 14,999 Points	7%
SAS Institute, Inc	SAS Training Points Each Training Point - 15,000 to 30,199 Points	7%
SAS Institute, Inc	SAS Training Points Each Training Point - 30,200 to 44,349 Points	7%
SAS Institute, Inc	SAS Training Points Each Training Point - 44,350 to 59,999 Points	7%
SAS Institute, Inc	SAS Training Points Each Training Point - 60,000 to 77,999 Points	7%
SAS Institute, Inc	SAS Training Points Each Training Point - 78,000 to 168,999 Points	7%
SAS Institute, Inc	SAS Training Points Each Training Point - 169,000 to 249,999 Points	7%
SAS Institute, Inc	SAS Training Points Each Training Point - 250,000 Points and over	7%
SAS Institute, Inc	Expert Technician - Expert knowledge of SAS products and the proven ability to create solutions in complex environments. Provides global counsel on the application of SAS products into a customer environment. Vast knowledge of open and proprietary systems aids in the selection, design, and implementation of a complete SAS software solution. Minimum years of experience for performance of this service is 12 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	12.77%
SAS Institute, Inc	Principal Solutions Architect - Provides senior leadership and consulting for SAS technical, architectural, analytical, government, and business solutions. May provide senior program and project management or subject matter expertise. Provides strategic SAS consulting services, including assessment, solution development, and implementation. Minimum 10 years of experience for performance of these services. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	6.17%

**DIR-TSO-4368**  
**APPENDIX C PRICING INDEX (PER AMENDMENT 1)**  
**EXECUTIVE INFORMATION SYSTEMS**

BRAND	PRODUCT DESCRIPTION	DIR Customer Discount % off MSRP
SAS Institute, Inc	Principal Technician - Provides specialized subject matter expertise, guidance, and project direction in one or more of the following areas: compliance consultation and legislative and regulatory issues; review and improvement to planning and budget submission processes; Congressional consultation in support of agency strategic and performance plans; data warehousing and data mining including predictive modeling; and decision technology application at the enterprise and group level. Minimum years of experience for performance of this service is 10 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	9.87%
SAS Institute, Inc	Managing Technician - Provides project management and high level technical direction. Supports the definition and implementation of planning processes and systems at the enterprise or group level including both strategic and operational activities. Manages and coordinates project activities and serves as the technical lead and liaison for the client. Minimum years of experience for performance of this service is 8 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	9.87%
SAS Institute, Inc	Senior Systems Technician - Provides direction, facilitation, planning analysis, performance measurement analysis, and technical analysis and design for executive information and decision support technologies in support of enterprise or group level planning. Serves as the technical and team lead for the project. Minimum years of experience for performance of this service is 4 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	16.80%
SAS Institute, Inc	Hosting for SAS® Analytics Environment - Small - Annual Fee	16%
SAS Institute, Inc	Hosting for SAS® Analytics Environment - Medium, Annual Fee	16%
SAS Institute, Inc	Hosting for SAS® Analytics Environment - Large, Annual Fee	16%
SAS Institute, Inc	Hosting for Standalone SAS® Visual Analytics Environment - Small, Annual Fee	16%
SAS Institute, Inc	Hosting for Standalone SAS® Visual Analytics Environment - Medium, Annual Fee	16%
SAS Institute, Inc	Hosting for Standalone SAS® Visual Analytics Environment - Large, Annual Fee	16%
SAS Institute, Inc	SAS® Remote Managed Software and Services for SAS software - annual fee for 3 year committed agreement - one defined environment	20%

## APPENDIX D TO DIR CONTRACT NO. DIR-TSO-4368

### Software Product Terms

For the products identified herein, the terms of DIR Contract No. DIR-TSO-4368 and those set forth below shall apply in addition to the terms and conditions set forth in the EIS License Attachment, and the Standard Terms and Conditions for Product and Related Services Contracts (the “Terms”). The following terms shall supplement the Terms, any purchase order issued thereunder, or any other document constituting the agreement between Vendor and a Customer. If conflict in terms are found, DIR Contract No. DIR-TSO-4368 shall prevail. Each Purchase Order shall list the specific software, and applicable quantities, to be licensed by such Customer. The following terms shall relate to each Purchase Order to the extent applicable to the products licensed therein.

#### **I. GENERAL LICENSE TERMS: THE FOLLOWING TERMS SHALL APPLY TO A VALID PURCHASE ORDER TO THE EXTENT APPLICABLE AND SPECIFIED THEREIN (OR AS USED IN SECTION II).**

The Software is licensed (1) on a per server basis for use with the supported operating system designated on the order; (2) for an unlimited number of users or on a user increment basis for a specified number of users, or (3) on a per mainframe basis for use with the supported operating system designated on the order. The order will specify if the Software is licensed on a per-server, user increment basis or per mainframe. If the Software is licensed on a per-server or per mainframe basis, each copy of Software must only be installed on individual CPUs (i.e. the authorized hardware). If the Software is licensed on a user-increment basis, the total number of individuals who access the Software during the license period must be counted and included in the user increment licensed.

Certain Software may be licensed for use on a **Mainframe**. With respect to mainframe hardware, processing power is based on Millions of Instructions Per Second.

**Processor Core Based Pricing:** Upon mutual agreement of the Customer and Vendor, the product fee is based on the total number of processor cores on which the product will be installed and used rather than any other applicable metric set forth in the Contract. In such event, the applicable purchase order shall identify that the product is licensed on “product core basis” or like designation. The licensed product may only be installed and used on the total number of processor cores listed herein for such product, all of which must be contained within one single item of authorized hardware. Customer may not install or use the product on a greater number of processor cores.

For Software licensed on a **Server Sub-capacity** basis (or similar designation), the Software license fee is based on the total number of processor cores allocated to the partition of the server hardware on which the Software is installed. The partition must be established and maintained using software or other technological means, as specified by the server hardware manufacturer, to isolate, at all times, use of the Software to the licensed number of processor cores. A separate



license is required for each partition. Authorized Hardware is defined as the licensed partition identified by name on the first page of this Supplement.

The following terms apply to any license for Software that is identified in any applicable order as for “**virtual client use**” or use in a virtualized personal computer environment or virtualized client environment (or such similar identification). The Software license fee is based on the total number of users (not concurrent) authorized to access the Software via one or more Virtual Machines on the designated operating system. For purposes of this provision, a “Virtual Machine” is defined as a virtual environment, running a Windows workstation operating system that is created within and managed by a centrally located host computer using commercially available virtualization software providing an interface to access the resources of the host computer. Unless otherwise authorized in writing by EIS, each Virtual Machine is limited to a maximum of four (4) virtual processor cores.

The following terms apply to any license for Software that is identified in any applicable order hereunder as for use in a **virtualized server environment** (or such similar identification): The Software is licensed for use on the number of virtual processor cores listed in the applicable order. If the number of virtual processor cores is not identified, then the Software is licensed for four (4) virtual processor cores. Such Software shall be allocated to one (1) virtual machine in which the Software is installed. For purposes of this provision, a virtual machine is defined as an environment, identified by a unique name (to be specified by the Customer in writing to EIS), and created using commercially available virtualization software, in which use of the Software is isolated, at all times, to a specified number of virtual processor cores (“Virtual Machine”). A separate Software license is required for each Virtual Machine. For the purposes of this provision, authorized hardware is defined as the named Virtual Machine identified by Customer in writing to EIS. Customer may change the name of the licensed Virtual Machine upon prior written notice to EIS. The Virtual Machine may run only on a single physical host machine at any given time but may be moved from one physical host machine to another so long as the named Virtual Machine and maximum number of virtual processor cores allocated to it remain unchanged. Customer will not combine virtual processor cores across multiple Virtual Machines. Unless otherwise authorized in the applicable order, the physical host machine must be located on Customer’s premises. In order to be eligible for the Virtual Machine based license, Customer must install version 9.2 or higher of the Software.

With regard to Software licensed for **desktop use** (or use on **personal computers** or such similar designation), Customer may make one (1) additional copy of the Software for home use by each Customer employee who also uses the Software at work (“Home Use”) and such Home Use copies shall not count toward the total users or workstations licensed, provided: (i) each Home Use copy is installed on a personal computer or laptop located in the United States and owned by such Customer employee; (ii) Home Use is limited to use for Customer’s purposes by an employee who also uses the Software at work; (iii) the operating system of the hardware on which each Home Use copy is installed mirrors the operating system of Customer’s hardware on which the Software is installed; and (iv) the total number of Home Use copies does not exceed the total number of users or workstations, as applicable, licensed by Customer. If Customer

wishes to increase the number of licensed users or workstations, Customer must contact EIS and pay to EIS the applicable fees for such additional licenses as set forth in the Price List. The identical copyright notice and any other proprietary rights notice found on the original Software media must be maintained on all Home Use copies. Customer will maintain records of the names of all employees using the Software for Home Use and will provide EIS with a copy of such records upon request. Subject to Government security requirements, Customer will inform all persons authorized to use the Software pursuant to this provision of the relevant terms of the license for such Software and will be responsible for their adherence to such terms. The foregoing provisions do not apply to Software licensed for use in a virtualized environment.

**“Total Users”** means that the Software license fee is based on the total number of Users (not concurrent) who access the Software during the applicable license period.

**“PC Use”** is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order, the client component of any Software, if applicable, is limited to PC Use of five (5).

**“Bundle Capacity”** as referenced in Section II of this exhibit means that the Software is licensed on a per server basis as identified above, provided that the Software is also licensed as a bundle of technology and not an "integrated solution" such that the server-based Software components in the bundle may be used alone or with the other components bundled with the Software.

The following terms apply for any Software licensed for use on a **“Grid”** or by **“Grid Processor Cores”** or **“Grid Processor Core Count”** (or similar language referring to a number of processor cores available in a Grid computing environment): The Software license fee is based on the sum of all processor cores of all Authorized Hardware in the Grid on which the Software is installed. A Grid is a network of Authorized Hardware which uses the combined processing power of the Authorized Hardware to process and run applications initiated in the network. Software may be installed on Authorized Hardware in the Grid as specified in a valid Purchase Order. A license for SAS® Grid Manager Software is a prerequisite to licensing any other Software in a Grid. The Grid Manager Software, including all of its components, may be used solely for grid management and job scheduling purposes in conjunction with SAS software applications residing on Authorized Hardware included in the licensed Grid. Upon installation, Customer will provide EIS a statement identifying the configuration of the Grid, to include the total number of nodes in the Grid and the total number of grid processor cores per Software product per Grid node, as well as such other reasonably requested Grid configuration information. Customer will update the same from time to time and upon reasonable request.

**Distributed Capacity License** means the following: The Software license fee is based on the full processing capacity of the computer hardware architecture where distributed Software computation and processing occurs (“Distributed Environment”). Full processing capacity is

defined as the total number of physical processor cores, including each physical processor core on each chip, and/or virtual processor cores contained within the Distributed Environment. “Authorized Hardware” is defined as the Distributed Environment.

**Technology Bundle Offering** means the following: The Software is licensed as a Technology Bundle Offering. Accordingly, Customer may use the Software subcomponents alone or with the other subcomponents bundled with the Software. Unless otherwise provided in this Supplement, the Software license entitles Customer to implement a single configured installation of the Software. If the Software is designed for operation across multiple hardware tiers as described in its Documentation, the term “single configured installation” includes installation of subcomponents of the Software on multiple hardware tiers which operate together as a single configuration. All computer hardware within the multiple hardware tier environment is considered Authorized Hardware for the purposes of the agreement. Authorized Hardware for the server-tier Software subcomponents will be listed on the Purchase Order or separately provided to EIS. Otherwise, “single configured installation” includes installation of the Software on a single item of Authorized Hardware or on the number of items of Authorized Hardware authorized in this Supplement.

Certain Software may be licensed as part of a **Solution Offering**. For such software, Customer may use the Software and all its subcomponents only as an integrated offering and only within the scope of the Solution Purpose Statement set forth herein. The Software is designed for installation across multiple hardware tiers. All computer hardware within the multiple hardware tier environment shall be considered Authorized Hardware for the purposes of the Agreement. Authorized Hardware for the server-tier Software subcomponents is listed on the Supplement Grid. The Software license entitles Customer to implement a single configured installation of the Software. As part of the single configured installation, Customer may install and use the Software in one (1) production environment, one (1) test environment and one (1) development environment, subject to any pricing metric restrictions listed on the Supplement Grid. Customer shall not use the Software installed in the test environment or the development environment for production purposes or as a fail-over system. The operating system for all environments must be the same

The following “**Cloud Computing**” terms apply to any license for Software within a cloud environment: Customer represents that it has established and currently maintains a private online account, identified in this Supplement by account number, (“Cloud Account”) with a third party provider (“Provider”) of public Internet-based computing resources (“Public Cloud”). Upon issuance of a Purchase Order, and as such information is updated from time to time, Customer will provide Customer’s Cloud Account number and any other information reasonably required by EIS to enable Customer’s use of the Software within Customer’s Cloud Account. Notwithstanding anything to the contrary contained in the Contract, Customer may install and store an image of the Software in a single Customer-controlled Cloud Account. Customer shall use the Public Cloud facilities to structure its Cloud Account such that (i) installation and storage of the Software image is restricted at all times to Customer’s Cloud Account and (ii) access to the Software image is restricted at all times to authorized Users. Customer shall not apply an active Product Authorization Code to a Software image. Customer shall install within its Cloud Account only Software designated by SAS as version 9.3 maintenance release 2, or later.

Customer may use the Software image to create a running instance and shall apply Product Authorization Codes provided by EIS only to a running instance. If the licensed Software is designed for deployment across multiple hardware tiers, an instance shall be defined as a single virtual machine within the deployment and such deployment may include multiple instances corresponding to the multiple hardware tiers. If the Software is designed for deployment on a single hardware tier, an instance is defined as a single virtual machine and such deployment shall include only a single instance. Notwithstanding anything to the contrary contained in the Contract, “Authorized Hardware” shall mean the virtual machine(s) associated with a single deployment. Unless otherwise authorized in a Purchase order, Customer shall not create instances for more than a single deployment of the Software at any given time. A separate license is required for each concurrent Software deployment in use by Customer. If the Software license fee is based on the capacity of the Authorized Hardware or if the Software license otherwise restricts the maximum capacity of the Authorized Hardware, capacity shall not exceed the licensed number of virtual Processor Cores set forth in a Purchase Order unless Customer notifies EIS and pays additional license fees. Customer may use Public Cloud features to clone and/or save Customer’s instance(s) of the Software only to the extent required to enable Customer to use the Software as authorized hereunder. Customer shall not use Public Cloud features to make the Software available to other Public Cloud accounts or for local deployment of the Software outside of Customer’s Cloud Account. EIS is not responsible for any fees charged to Customer by the Public Cloud Provider; for maintenance and support of any Public Cloud software or resources; for management, back-up and/or restoration of Customer content or data; or for any loss of content or productivity resulting from issues associated with the Public Cloud. Customer shall be responsible for any access to or use of the Software and/or Product Authorization Code by any party including, but not limited to, Provider, in any manner that is inconsistent with the terms and conditions of the Contract or EIS’ intellectual property rights. Technical support is limited to assistance with issues related to Software functionality. EIS makes no representations or warranties with respect to Software performance in a Public Cloud. Information regarding technical support policies, including support for Software installed in a Public Cloud, can be found at [support.sas.com](http://support.sas.com).

The following terms apply to any license for Software that is identified as for test purposes only (“**Test Software**”) in any applicable order for the license of Software arising hereunder. In order to license Test Software, Customer must have already licensed (or is simultaneously licensing) for production use, licenses for the same SAS software product(s) that make up the Test Software (“**Production Software**”),

- Customer’s license to use the Test Software is solely to verify the quality and accuracy of data output on the hardware and operating system (“**Test Environment**”) with respect to which the applicable Test Software is licensed, subject to the following.
  - Customer shall not change the operating systems under which the Production Software (“**Production Environment**”) and Test Software are currently licensed unless Customer notifies EIS in writing that Customer desires to change such operating system(s) and EIS approves such change; and
  - The hardware on which the Test Software that is licensed by hardware capacity (as applicable) is installed in accordance with Customer’s license of such Test Software and must have the same or lower machine classification rating by SAS

- (“MCR”) as the MCR of the hardware on which the corresponding Production Software is installed in the Production Environment in accordance with Customer’s license of such Production Software; and
  - The number of each type of licensed user of the Test Software that is licensed by quantity of such users (as applicable) and for which annual maintenance is subsequently purchased by Customer must be the same as the number of licensed users of the corresponding Production Software and for which annual maintenance is subsequently purchased by Customer.
- The Test Software may at no time be used by or for Customer (i) in a production environment or as a fail-over system, (ii) to create applications or code or (iii) for any software development.
- Customer must maintain a separate license for the Production Software under the same operating system as the Test Environment. Customer’s license to use the Test Software shall automatically terminate upon expiration or termination of Customer’s license of the corresponding Production Software or upon failure of Customer to purchase maintenance renewal for such Production Software or the corresponding applicable Test Software for the next maintenance renewal period following the expiration of any then current maintenance period with respect to such Production Software or applicable Test Software.

The following terms apply to any license for Software that is identified as for development purposes only (“**Development Software**”) in any applicable order for the license of Software arising hereunder, which order for such Development Software is also discounted from the full price set forth in the Price List. In order to license Development Software, Customer must have already licensed (or is simultaneously licensing) for production use, licenses for the same SAS software product(s) that make up the Development Software (“Production Software”),

- Customer’s license to use the Development Software is solely for development purposes to create applications and code on the Customer hardware running the operating system with respect to which the Development Software is licensed (“Development Environment”), subject to the following.
  - Customer shall not change the operating systems applicable to the Production Environment or the Development Environment unless Customer notifies EIS in writing that Customer desires to change such environments and EIS approves such change (“Production Environment” means the Customer hardware running the operating system with respect to which the Production Software is licensed); and
  - The hardware on which the Development Software that is licensed by hardware capacity (as applicable) is installed in accordance with Customer’s license of such Development Software and must have the same or lower machine classification rating by SAS (“MCR”) as the MCR of the hardware on which the corresponding Production Software is installed in the Production Environment in accordance with Customer’s license of such Production Software; and

- The number of each type of licensed user of the Development Software that is licensed by quantity of such users (as applicable) and for which annual maintenance is subsequently purchased by Customer shall be the same as (or fewer than) the number of licensed users of the corresponding Production Software and for which annual maintenance is subsequently purchased by Customer.
- The Development Software shall at no time be used by or for Customer (i) in a production environment or as a fail-over system or (ii) in a test environment.
- Customer must maintain a separate license for the Production Software under the same operating system as the Development Environment. Customer's license to use the Development Software shall automatically terminate upon expiration or termination of Customer's license of the corresponding Production Software or upon failure of Customer to purchase maintenance renewal pursuant to the Contract for such Production Software and the corresponding applicable Development Software for the next maintenance renewal period following the expiration of any then current maintenance period with respect to such Production Software or applicable Development Software.

DIR Contract No. DIR-TSO-4368 and the following terms govern Customer's use of each of the SAS Software offerings noted in the following provisions which consist of combinations of SAS software components or which include sub-components supplied by third parties and SAS (collectively, "**Software Solutions and Suites**," or singly, "**Software Solution or Suite**").

- Software Solutions and Suites consist of bundled components. Customer may use such bundled components only through the application under which they are bundled, and may not use or deploy any individual component as a replacement for other SAS Software. Individual components may be provided to Customer on the same or different media as other components of the Software Solution or Suite. EIS may add, modify or delete individual components in new releases. All additional and modified component software shall be governed by these terms and the terms of the EIS License Attachment.
- Specific usage or system requirements related to particular Software Solutions and Suites, if applicable, may be included in the price lists for such products. Software Solutions and Suites may only be used by Customer if Customer has a license to use the applicable SAS Software on appropriate hardware which is to be specified in Customers' orders for the licenses of such Software Solutions and Suites.
- Subject to any specific requirements or restrictions applicable to a Software Solution or Suite, Customer's employees ("Employees") and any authorized third party end users ("Third Party End Users") may use Software Solutions and Suites to access static, web-based applications written in SAS software ("Applications") that reside on the same hardware for which the Software Solutions and Suites are licensed by Customer. Except with EIS' prior written consent, Customer shall not use or allow any Employees or Third Party End Users to use the Software Solutions or Suites, whether directly or through any Application, to process or permit to be processed any third party data or to access any SAS Software that resides on any other hardware unless the Software is also licensed for use on that other hardware. The Applications must be written such that Third Party End Users may not edit SAS programs or have access to any other capability for free form programming in SAS Software. Customer may not use any Software Solutions or Suites

to download or otherwise export or re-export any software or any underlying information or technology except in full compliance with all laws and regulations of the United States of America and any other applicable laws and regulations. Customer is responsible for Third Party End User access to SAS software. The United Nations Convention on Contracts for the International Sale of Goods is excluded from this license.

- The warehouse administration function of certain Software Solutions and Suites is licensed on a per named administrator basis. Upon licensing this Software, Customer must provide EIS with the name(s) of the warehouse administrator(s). As those administrators change, Customer may call or write EIS to update EIS. The warehouse administrator must be a Customer employee or other authorized user under the license.
- Unless otherwise authorized by EIS, the AppDev Studio™ functionality of any Software Suite may only be used for development and testing purposes, and may not be used for production use (although the applications and/or applets created with AppDev Studio may be used in a production environment).
- Customer may use Software Suites containing a "performance data warehouse" solely for the purpose of web log data reporting and analysis through a "performance data warehouse." A "performance data warehouse" is the data warehouse or structure created by certain Software Suites to house detailed and summarized performance data and other information necessary to manage the web log data Customer provides to such Software Suite. Customer may not modify such Software Suites to use elements of such Software Suites' functionality to analyze or report on data outside the performance data warehouse.
- Customer acknowledges that certain Software Solutions and Suites include components which contain software licensed to EIS' licensors by Sun Microsystems, Inc. ("Sun Microsystems"), Microsoft Corporation ("Microsoft"), and certain other vendors (collectively, "Third Party Software"). The following additional terms shall apply to the Third Party Software and shall take precedence over any conflicting terms in the license:
  - Customer may not distribute the Third Party Software to any third party in any modified form. The Third Party Software may not be leased, assigned, or sublicensed, in whole or in part. The Third Party Software is not designed or intended for use in online control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility. Customer warrants that Customer will not use or redistribute the Third Party Software for such purposes. This license does not authorize Customer to use any of SAS' names, trademarks or logos or any of its licensors' names, trademarks and logos, including but not limited to Sun Microsystems' and Microsoft's trade names, trademarks or logos.
  - Use, duplication, or disclosure of the Third Party Software and related documentation by the US Government is subject to restrictions as set forth in Rights in Technical Data and Computer Software Clauses in DFARS 252.277-7013(c)(1)(ii) and FAR 52.227-19, Commercial Computer Software – Restricted Rights (June 1987) as applicable and the license.
  - **DISCLAIMER OF WARRANTY. THE THIRD PARTY SOFTWARE IS PROVIDED TO CUSTOMER "AS IS" WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**SAS' LICENSOR(S) DISCLAIM ANY LIABILITY CONNECTED WITH USE  
OF THE THIRD PARTY SOFTWARE.**

- With regard to SAS/ACCESS Software that contains subcomponents licensed to EIS' licensors by DataDirect Technologies or Progress Software Corporation, the following terms are included herein: This product is a "commercial component," as this term is defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "computer software documentation," as such terms are defined in 48 C.F.R. §252.227-7014(a)(1) and 48 C.F.R. §252.227-7014(a)(5), respectively, and used in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government entities acquire this product only with those rights set forth in the license agreement accompanying this product.

**Software maintenance as a product** must be purchased annually by Customers following the first annual period of a software license in order to receive Software maintenance as contemplated by the License Attachment. Certain Customers may have originally licensed Software pursuant to a separate contract with EIS. Customers may purchase software maintenance as a product pursuant to this Contract but Customer's software license shall remain subject to the originally applicable license and software use terms set forth in the original contracting documentation. Purchase of Software maintenance as a product under this Contract does not establish a new Software license on new Software license terms. Software products may from time to time no longer be generally available for license to the general public. Under such circumstances, EIS or its licensor will make reasonable efforts to provide adequate notice to affected Customers and work to assist such Customers with migrating their licenses to alternate products. If such Customers do not migrate such products, the level of technical support may diminish over time.

In some instances, **Prerequisite Software** and/or minimum licensing thresholds may be required in order to license Software contemplated by this Contract, even if not specifically identified in Section II below. In addition, Software may only function on certain operating systems or require the purchase of additional professional services.

**II. SPECIFIC SOFTWARE TERMS: DIR CONTRACT NO. DIR-TSO-4368 AND THE  
FOLLOWING TERMS SHALL ONLY APPLY TO THE SOFTWARE SPECIFICALLY  
REFERENCED BELOW IF LICENSED PURSUANT TO A VALID PURCHASE ORDER.**

**Enterprise Miner™ Software:**

- Customer is not authorized to use Enterprise Miner with third party data for the benefit of a third party unless the licensing documents are amended and additional fees paid. A third party is any government department, agency, contractor or any other third party that is not a part of the licensed government department, agency or contractor.
- If a client component is included with the Software, the client component is licensed on a PC Use basis.



**SAS Business Rules Manager:**

- The Software is licensed as a Technology Bundle Offering.
- The license of the Software also includes a license of:
  - one (1) SAS/Access Software product chosen by the Customer (which may be requested at any time as long as the maintenance is maintained).

**SAS® Enterprise Miner Desktop** is licensed on a PC Use basis.

**JMP:** The Software license fee is based on the total number of Users (not concurrent) who access the Software during the applicable license period.

**JMP Software: Data Exploration e-Learning:**

- The Software license fee is based on the total number of Users (not concurrent) who access the Software during the applicable license period.
- Customer must notify EIS in writing prior to receiving Software as to whether the Software will be downloaded by the Customer or if the Customer will access the Software on the SAS website. If the Customer accesses the Software on the SAS website, Customer hereby agrees that the use of the Software is also governed by the SAS website Terms of Use found at [www.sas.com/Copyright.html](http://www.sas.com/Copyright.html). EIS and its licensors agree that notwithstanding any "clickwrap" or "clickthrough" license terms that the Customer must approve to download or access the Software, the terms and conditions of this Agreement shall control and the "clickwrap" or "clickthrough" license terms shall be of no force or effect. Customer specifically agrees that it will not disclose, distribute or make available the download/access codes to the Software other than to authorized Users.

**SAS® Enterprise Guide Software** is licensed on a Total User basis. “Total Users” is defined as the total number of individuals (not concurrent) who access the Software on each licensed operating system during the license period. Without the payment of additional license fees that may apply, Customer may not exceed the licensed Total Users.

**SAS® Text Miner:** If a client component is included with the Software, the client component is licensed on a PC Use basis.

**SAS® Text Miner Desktop for Windows Workstations:** SAS® Text Miner Desktop for Windows Workstations is licensed on a PC Use basis.

**SAS Concept Creation for SAS Text Miner:** SAS Text Miner and all of its prerequisite Software is required.

**SAS Analytics Pro; SAS Enterprise BI Server:** The Software is a Technology Bundle Offering.

**SAS/IntrNet:**

- Certain pre-requisite software may be needed depending on Customer’s intended use of the Software. Use of the Software is authorized for access to applications written in SAS that reside on the same server and operating system for which the Software is licensed.

**SAS Integration Technologies:** Use of the Software is authorized for access to applications written in SAS that reside on the same server and operating system for which the SAS Integration Technologies Software is licensed.

**SAS Data Integration Server:**

- The Software is a Technology Bundle Offering.
- The Software consists of the following additional subcomponents: Two SAS/ACCESS engines of Customer’s choice and three SAS Metadata Bridges to be defined by Customer.

**SAS® Data Governance:**

- The Software is licensed on a “Bundle Capacity” basis.
- If a client component is included with the Software, the client component is licensed on a PC Use basis.

**SAS® Data Management Advanced:**

- The Software is licensed on a “Bundle Capacity” basis.
- If a client component is included with the Software, the client component is licensed on a PC Use basis.
- The license of the Software also includes a license of:
  - two (2) SAS/Access Software products chosen by the Customer (which may be requested at any time as long as the maintenance is maintained); and
  - three (3) SAS Metadata Bridge products chosen by the Customer (which may be requested at any time as long as the maintenance is maintained).

**SAS® Data Management Standard:**

- The Software is licensed on a “Bundle Capacity” basis.
- If a client component is included with the Software, the client component is licensed on a PC Use basis.
- The license of the Software also includes a license of:
  - two (2) SAS/Access Software products chosen by the Customer (which may be requested at any time as long as the maintenance is maintained); and
  - three (3) SAS Metadata Bridge products chosen by the Customer (which may be requested at any time as long as the maintenance is maintained).

**SAS Data Management Enrichment:**

- Customer’s use of the Software is dependent upon Customer’s licensing, under the Agreement, certain other SAS software (“Prerequisite Software”). Customer has licensed, or is licensing, the Prerequisite Software as part of a collection of SAS software licensed

by SAS as a defined bundle or solution (“Software Package”). Customer may install the Software on, and/or access the Software from, any Authorized Hardware included as part of a single configured installation of the Software Package. Customer may use the Software only in conjunction with the Prerequisite Software licensed to Customer as part of the Software Package even if Customer has licensed the Prerequisite Software separate from the Software Package

- The Software may also be an optional add-on for certain qualifying SAS software or solution bundles.
- The Software also requires the license of at least one SAS DataPack.

**SAS® Data Quality Advanced; Data Quality Desktop; SAS® Data Quality Standard:** The Software is licensed on a “Bundle Capacity” basis. If a client component is included with the Software, the client component is licensed on a PC Use basis.

**SAS Federation Server:** The Software license fee is based on the total number of processor cores contained within a single item of Authorized Hardware. The Software is licensed as a Technology Bundle Offering.

- License of SAS Federation Server also includes as subcomponents SAS Data Management Quality Knowledge Base Locale of choice and SAS Data Management Quality Knowledge Base for Product Data of choice.

**SAS Forecast Server:**

- SAS® Forecast Server Software is licensed for use by the Customer on a single Customer server except as specified in this section with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS® Forecast Server Software and the Metadata Server component of that Software will be installed. The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. With respect to server hardware, processing power includes each processor on each chip. The Software is licensed as a bundle of technology and not an "integrated solution." Accordingly, the Software components in the Software may be used alone or with the other components bundled with the Software.
- The Customer’s license of the SAS® Forecast Server Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Forecast Server Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:
  - Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by EIS) of the SAS® Forecast Server Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS’ classification of the Customer server on which the licensed SAS® Forecast Server Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS®

Forecast Server Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.

**SAS Data Management Server Enrichment:** Customer's use of the Software is dependent upon Customer's licensing, under the agreement, certain other SAS software ("Prerequisite Software"). Customer has licensed, or is licensing under a valid Purchase Order, the Prerequisite Software as part of a collection of SAS software licensed by SAS as a defined bundle or solution ("Software Package"). Customer may install the Software on, and/or access the Software from, any Authorized Hardware included as part of a single configured installation of the Software Package. Customer may use the Software only in conjunction with the Prerequisite Software licensed to Customer as part of the Software Package even if Customer has licensed the Prerequisite Software separate from the Software Package.

**SAS Grid Manager:**

- The Grid Manager Software, including all of its components, may be used solely for grid management and job scheduling purposes in conjunction with SAS software applications residing on authorized hardware included in the licensed Grid. Base SAS and SAS/CONNECT must be licensed for each node in the Grid even if Customer is deploying a solution within the Grid and the solution package contains Base SAS and SAS/CONNECT

**Credit Scoring Add-On for SAS Enterprise Miner:** The Software includes Credit Scoring Add-on for SAS Enterprise Miner Client for PC Use. The Software is priced based on the same server processor core count or machine classification as SAS Enterprise Miner and must be installed on the same server as SAS Enterprise Miner. Additional services are required.

**SAS Enterprise Model Management:**

- The Software is licensed as a Technology Bundle Offering, provided, however, if licensed solely for use with SAS Real-Time Decision Manager, then it is considered a Solution Offering.
- Customer receives a choice of either SAS/ACCESS Interface to Oracle, or SAS/ACCESS Interface to PostgreSQL.
- Software includes the following subcomponent: SAS Enterprise Miner Personal Client (PC Use).

**SAS® Visual Analytics:**

- If the Software is licensed for use on **SAS Viya** or for use in an environment that is distributed across more than one computer (**Distributed Mode**), the Software is licensed a Distributed Capacity License.
- If the Software is licensed for use on a single server (**Non-Distributed Mode**), the Software license fee is based on the number of physical processor cores or virtual processor cores, as applicable, contained within the authorized hardware. If the authorized hardware is a physical server, the license fee is based on the total number of

physical processor cores contained within the physical server. If the authorized hardware is a partition of a physical server, the Software license fee is based on the total number of physical processor cores contained within the physical server partition and Customer must use software or other technological means, as specified by the server manufacturer, to limit, at all times, the partition to no more than the licensed number of physical processor cores. If the authorized hardware is a Virtual Machine, the Software license fee is based on the total number of virtual processor cores allocated to the Virtual Machine. A “Virtual Machine” is a single virtual environment, identified by a unique name as specified to EIS in writing by Customer, created using commercially available virtualization software, in which use of the Software is isolated, at all times, to a specified maximum number of virtual processor cores. The Virtual Machine may run only on a single physical host machine at any given time but may be moved from one physical host machine to another so long as the Virtual Machine name, operating system, and maximum number of virtual processor cores allocated to it remain unchanged. Unless otherwise authorized in the applicable order, the physical host machine must be located on Customer’s premises. The Software is comprised of subcomponents. Each Software subcomponent may be used only in conjunction with the Software and may not be used or deployed for any other purpose. In all cases, without the payment of additional license fees that may apply, Customer may not exceed such licensed number of processor cores.

- The license of the Software in **Distributed Mode** or **Non-Distributed Mode** includes a license of either of the following:
  - One (1) SAS/ACCESS software product chosen by Customer (which may be requested at any time as long as the maintenance is maintained), OR
  - SAS Data Surveyor for SAP. Customer may use the SAS Data Surveyor for SAP software (“Data Surveyor”), including its subcomponents, solely to access SAP data in the licensed SAP database. Customer may not use or deploy any individual Data Surveyor subcomponent for any other purpose or as a replacement for any SAS software.
- The license of the Software on **SAS Viya** includes a license of:
  - One (1) SAS/Access Software product chosen by the Customer (which may be requested at any time as long as the maintenance is maintained).

#### **SAS Data Surveyor for SAP:**

- Customer may use the SAS Data Surveyor for SAP software (“Data Surveyor”), including its subcomponents, solely to access SAP data in the licensed SAP database. Customer may not use or deploy any individual Data Surveyor subcomponent for any other purpose or as a replacement for any SAS software.
- Base SAS or a SAS bundle or solution containing Base SAS is required.

**SAS® Office Analytics:** The Software is licensed based on a “Bundle Capacity” basis.

**SAS®/Access to SQL Server:** This product is a “commercial component,” as this term is defined in 48 C.F.R. §2.101, consisting of “commercial computer software” and “computer software documentation,” as such terms are defined in 48 C.F.R. §252.227-7014(a)(1) and 48

C.F.R. §252.227-7014(a)(5), respectively, and used in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government entities acquire this product only with those rights set forth in the license agreement accompanying this product. The Software may be used by Users for the benefit of Customer solely to access data residing in Customer's Microsoft SQL Server database.

**SAS®/Access to Adabas, SAS/Access to CA IDMS, SAS/ACCESS Interface to CA-Datcom/DB, SAS/Access Interface to IMS-DL/I, SAS/Access Interface to SYSTEM 2000, Software:** The Software license fee is based on the processing power of the Authorized Hardware on which the Software is installed where processing power includes the total MSUs of the Authorized Hardware. MSUs are a measurement of mainframe computing capacity expressed in terms of millions of service units per hour as determined by ratings maintained by IBM Corporation.

**SAS Contextual Analysis:**

- The product fee is based on the total number of processor cores contained within a single item of authorized hardware on which the product is installed. The purchase order for the license will list the total number of licensed processors cores and Customer shall not install or use the product on a number of processor cores that exceeds the listed, licensed number of processor cores.
- The license of SAS Contextual Analysis also includes a license of a one (1) available SAS/Access software product chosen by the Customer

**SAS Visual Statistics - Non-Distributed Mode:**

- The product fee is based on the total number of processor cores contained within a single item of authorized hardware on which the product is installed. There is a four (4) processor core minimum. The purchase order for the license will list the total number of licensed processors cores and Customer shall not install or use the product on a number of processor cores that exceeds the listed, licensed number of processor cores.
- Customer's use of the SAS software product is restricted in scope to the functionality available in the licensed solution. Customer may not use subcomponents individually or separately from the overall software solution unless specifically stated herein.
- SAS Visual Statistics requires a separate license of SAS Visual Analytics and must be installed on the same hardware as SAS Visual Analytics.
- Customers must license the same core count for SAS Visual Statistics as for SAS Visual Analytics.
- SAS Visual Statistics is not supported, tested, or warranted to run on Windows workstations.

**SAS Visual Statistics - Distributed Mode:**

- The Software is provided as a Distributed Capacity License. There is a four (4) blade and sixteen (16) processor core minimum. The purchase order for the license will list the total number of licensed processors cores and Customer shall not install or use the product on a number of processor cores that exceeds the listed, licensed number of processor cores.
- Customer's use of the SAS software product is restricted in scope to the functionality available in the licensed solution. Customer may not use subcomponents individually or separately from the overall software solution unless specifically stated herein.
- SAS Visual Statistics requires a separate license of SAS Visual Analytics and must be installed on the same hardware, and same core count, as SAS Visual Analytics.
- SAS Visual Statistics is not supported, tested, or warranted to run on Windows workstations.

#### **SAS Visual Statistics – on SAS Viya:**

- The Software is provided as a Distributed Capacity License. There is a 4 processor core minimum.
- SAS Visual Statistics requires a separate license of SAS Visual Analytics and must be installed on the same hardware as SAS Visual Analytics.

#### **SAS Visual Investigator:**

- The Software is provided as a Distributed Capacity License.
- The Software license fee is based on the total number of Users (not concurrent) who access the Software during the applicable license period.
- Customers must license a minimum of 16 processor cores and a minimum of 10 users.
- Additional services may be required.
- The license of the Software also includes a license of:
  - Two (2) SAS/ACCESS Software products on SAS Viya chosen by the Customer (which may be requested at any time as long as the maintenance is maintained).

#### **SAS Visual Data Mining and Machine Learning:**

- The Software is provided as a Distributed Capacity License.
- The license of the Software also includes a license of SAS Text Analytics for English (on SAS Viya); Customer may select one additional SAS Text Analytics (on SAS Viya) language at no additional charge.
- Both SAS Visual Analytics (on SAS Viya) and SAS Visual Statistics (on SAS Viya) are required prerequisite software. A minimum of four processor cores is required.
- The Software is supported on Linux for x64 (LINA) operating systems only.
- Additional services may be required.

#### **SAS Data Preparation:**

- The Software is provided as a Distributed Capacity License.
- SAS Visual Analytics (on SAS Viya) is required.
- The Software is licensed as a Technology Bundle Offering.

- SAS Visual Analytics (on SAS Viya) is required prerequisite software. Customer must license a minimum of four processor cores.

#### **SAS Model Manager (on SAS Viya):**

- The Software is provided as a Distributed Capacity License.
- SAS Visual Analytics (on SAS Viya) is required. A minimum of four processor cores must be licensed by Customer.
- The Software is licensed as a Technology Bundle Offering.

#### **SAS Model Manager:**

- License of the Software includes either SAS/ACCESS Interface to Oracle or SAS/ACCESS Interface to PostgreSQL.
- The Software is licensed as part of Technology Bundle Offering; however may also be licensed in conjunction with other qualifying SAS Software as part of a solution offering.

#### **SAS Event Stream Processing (SAS Viya Enabled):**

- The Software license fee is based on the total number of Events which are published to the Software and can be acted upon by the Software during an annual period. An “Event” is defined as (i) a single record of data consisting of metadata and field data that is generated by an external system or asset (such as, but not limited to, a machine or sensor) and (ii) a single record of data derived from the transformation of one or more Events by the Software through aggregation, projection, pattern matching or other methods which will be counted in addition to the Event or Events from which the transformed Event is derived.
- Users may use the Software solely for the benefit of Customer to process and act upon Events. Customer may install the Software on any number of items of Authorized Hardware located in the Territory. Events ingested by development and/or test environments do not count toward the licensed quantity of Events. Customer will ensure that any Software metering functionality, as defined in the Software Documentation, is enabled when the Software is installed and will not subsequently disable or otherwise circumvent such metering functionality.
- The Software may include components which may only be used in support of the solution’s overall application.
- Additional services may be required.
- There is no limit on the number of installations of the offering, including installations for Development, Test, or failover use.

#### **SAS Event Stream Manager:**

- The Software license fee is based on the total number of Managed Installs administered by the Software during each annual license period where a “Managed Install” is a single installation of a SAS software offering licensed by Customer under the Agreement that Customer monitors and manages using the Software.



- Users may use the Software solely for the benefit of Customer to manage Customer's SAS Event Stream Processing projects. Customer may install the Software on any number of items of Authorized Hardware located in the Territory. Managed Installs, as defined in this Supplement, consisting of development and/or test environments do not count toward the licensed quantity of Managed Installs.

#### **SAS Visual Text Analytics:**

- The Software is provided as a Distributed Capacity License.
- SAS Visual Analytics (on SAS Viya) is required. A minimum of four processor cores must be licensed by Customer.
- The license of the Software also includes a license of SAS Text Analytics for English (on SAS Viya); Customer may select one additional SAS Text Analytics (on SAS Viya) language at no additional charge.

#### **SAS Visual Forecasting (on SAS Viya), SAS Econometrics (on SAS Viya), SAS Optimization (on SAS Viya):**

- The Software is provided as a Distributed Capacity License.
- SAS Visual Analytics (on SAS Viya) is required prerequisite software. A minimum of four processor cores must be licensed by Customer.
- The Software is supported on Linux for x64 (LINA) operating systems only.

#### **SAS Decision Manager (on SAS Viya):**

- The Software is provided as a Distributed Capacity License.
- SAS Visual Analytics (on SAS Viya) is required prerequisite software. A minimum of four processor cores must be licensed by Customer.
- The Software is supported on Linux for x64 (LINA) operating systems only.
- When licensed alone, the Software is treated as a Technology Bundle Offering.

#### **TX PC Bundle:**

- The product includes the following SAS products for installation on one (1) personal computer.
  - SAS Analytics Pro
  - SAS/QC
  - SAS/SHARE
  - SAS/ACCESS Interface to ODBC
  - SAS/ACCESS Interface to ORACLE
  - SAS/ACCESS Interface to PC File Formats
  - SAS/ACCESS Interface to SYBASE
  - SAS/AF
  - SAS/ASSIST
  - SAS/CONNECT

- SAS/EIS
  - SAS/ETS
  - SAS/FSP
  - SAS/GIS
  - SAS/IML
  - SAS/INSIGHT
  - SAS/LAB
  - SAS/OR
- The product license fee is based on the total number of users (not concurrent) who access the software during the applicable license period. The purchase order for the license will list the number of users and Customer shall not exceed the listed, license number of users.
  - Not all component software products are available at all SAS release levels. Fees remain the same regardless of which release Customer licenses.
  - Component software products may change without notice and some components may not be available in new releases upon renewal of licenses.
  - This product is available only for Customer that are Texas governmental entities.

**III. TRAINING POINTS: DIR CONTRACT NO. DIR-TSO-4368 AND THE FOLLOWING TERMS ARE APPLICABLE TO PURCHASE OF TRAINING POINTS TO BE USED TOWARDS TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE:**

- Customer must designate a representative to serve as the main point of contact who will manage the SAS Training Points account, authorize employee registrations, and help coordinate the purchase of any products or services using SAS Training Points.
- SAS Training Points may be used to (a) register employees for public, Live Web or on-site courses; (b) pay the license fees for e-Learning and SAS Learning Subscription products; (c) purchase virtual lab time; (d) purchase SAS Certification exam vouchers; (e) pay SAS training center rental fees; (f) register for selected conferences, or (g) pay for other preapproved services performed by SAS or products offered by SAS (collectively “SAS Training Points-Eligible Products and Services”).
- SAS Training Points-Eligible Products and Services will have varying SAS Training Points assigned to them according to their applicable registration fees, license fees, or standard charges and must be pre-approved.
- Taxes shall be handled in accordance with the Contract.
- Class and conference sizes are limited and space is not guaranteed.
- EIS reserves the right to cancel or reschedule any and all SAS Training Points-Eligible Products and Services at its discretion. EIS reserves the right to deny training to any party prohibited by applicable law or regulation, including, but not limited to, United States export laws and regulations. EIS is not responsible for airline penalties related to the cancellation of courses or events. Please be aware of all airline restrictions regarding nonrefundable airline tickets when purchasing an airline ticket.

- The SAS Training Points Administrator will issue an account number to the designated contact upon receipt of its SAS Training Points order. Customer may begin using its SAS Training Points as soon as it receives an account number, but not before.
- No other discounts are applicable.
- SAS Training Points fees are non-refundable.
- SAS Training Points do not expire
- Cancellation Policy:
  - Public Courses: SAS Training Points may be reinstated to the account if cancellations are received by phone, mail or e-mail at least 10 calendar days prior to the scheduled start date of an event; after that (9 calendar days or less), SAS Training Points accounts will be charged the full number of corresponding SAS Training Points. Substitutions (name changes) are accepted at any time prior to the event. Transfers are accepted up to 24 hours before the event start date and students are allowed one transfer per course registration.
  - Onsite and Private Live Web Courses: The Customer may cancel on-site courses without charge if notification is received by phone or in writing no later than 21 days prior to the course start date. Rescheduling a course less than 21 days prior to course start date is considered a cancellation, and a cancellation fee of 50% of the total fee for the scheduled training will be charged and invoiced separately. Rescheduling a course less than 10 calendar days prior to course start date is considered a cancellation, and a cancellation fee of 100% of the total fee for the scheduled training will be charged and invoiced separately.

**IV. TECHNICAL SERVICES: DIR CONTRACT NO. DIR-TSO-4368 AND THE FOLLOWING TERMS SHALL APPLY IN THE EVENT ANY TECHNICAL SERVICES ARE SET FORTH ON A VALID PURCHASE ORDER.**

"Change Management" refers to a process for the parties to agree on a change or modification to the scope of Services, and "Change Order" refers to the document reflecting the change or modification. Requests by Customer or EIS for such changes will be made in writing to the other party. EIS, or its subcontractor SAS, will prepare the Change Order, which will contain the following information:

- a. A description of any additional work and/or deletions of work to be performed and/or any changes to the performance required of either party.
- b. A statement of the impact of the work or changes on the Services and the project schedule.
- c. The estimated timetable to complete the work specified in the Change Order.
- d. The estimated time and cost of any additional work and/or deletions of work associated with the Change Order.

EIS will provide the proposed Change Order to Customer's project manager for review, and if additional fees will be charged, the parties will agree on a proposed modification to the original Purchase Order or the issuance of a new Purchase Order. Customer's project manager will respond in writing to the proposed Change Order within five (5) business days. Each party must agree in writing to the Change Order. Pending such written agreement (and if additional fees will be charged, execution of the associated amendment), SAS, as EIS' subcontractor to perform

services, will continue to perform as if such Change Order had not been requested or recommended. If Customer provides its acceptance of the proposed Change Order in writing and, if applicable, issues the agreed upon Purchase Order, SAS' project manager will update the project plan to reflect the change(s).

**Executive Information Systems, LLC**

**Customer**

Signature	_____	Signature	_____
Name	_____	Name	_____
Title	_____	Title	_____
Date	_____	Date	_____

**APPENDIX E TO DIR CONTRACT NO. DIR-TSO-4368**  
**EIS LICENSE ATTACHMENT**

DIR Contract No. DIR-TSO-4368 and the following terms shall apply to the license of any SAS Institute Inc. ("SAS") software by a Customer. Software terms set forth below shall apply to licenses to be installed onsite at Customer's location (or approved third party designee).

**1. License Grant; Authorized Use.** Pursuant to the terms of DIR Contract No. DIR-TSO-4368 which include the terms of this Attachment, EIS hereby grants Customer a nonexclusive, nontransferable and nonassignable license to use the Software specified on a valid Purchase Order and accompanying online documentation made available by EIS with each license of the Software ("Documentation") with the operating systems agreed upon by the parties. Except as otherwise provided in a Purchase Order, the Software may be accessed only by Customer's employees, contractors, and other personnel working under the direction of or in conjunction with the Customer ("Users") doing work in the United States ("Territory") for the sole benefit of Customer. Software usage shall be limited to the license scope restrictions described herein. Customer's use of Documentation may only be used in support of its authorized and licensed usage of the Software.

- (a) Software provided under this Attachment will be authorized to operate for fifty (50) years.
- (b) Following the initial 12-month period hereunder, maintenance for desktop and server Software will be renewed on an annual basis subject to the then applicable maintenance fees available from EIS or other fees mutually agreed upon by the parties.
- (c) Mainframe software that may be licensed under this Contract is on an annual basis. The mainframe software may be renewed at the mutual agreement of the parties. The first license period will be for 12 months.

**1.1. Uses of the Software.** Customer may not use the Software or its Documentation (a) to create a commercial offering or product directly or indirectly competing with an offering or product from EIS' licensors, or (b) for the benefit of any person or entity where such use may result in the creation of a commercial offering or product directly or indirectly competitive with an offering or product from EIS' licensors. Customer may process only the following types of data through the Software: (a) Customer's data derived from Customer's operations in the Territory, (b) data purchased, licensed or leased from a third party by Customer; and (c) publicly available data (for example, national census data) (collectively, "Permitted Data"). Customer may not process any data, including Permitted Data, through the Software in a data service provider, application service provider, solution service provider or marketing service provider arrangement, nor in any similar arrangement for which Customer provides results derived from use of the Software to third parties or Related Entities nor may Customer use such results for the benefit of third parties.

**2. Authorized Hardware.** Customer shall only install software on hardware owned or leased by Customer ("Authorized Hardware") identified to EIS running a SAS supported operating system. All Authorized Hardware must be located in the Territory. If the Authorized Hardware is personal computer hardware, the Authorized Hardware must be owned or leased by Customer or Customer's employees. The term "personal computer" includes desktop computers, laptop computers, tablet computers, handheld computers, mobile devices and any other computing

device running a personal computer or mobile operating system. All other Authorized Hardware must be owned or leased by Customer and located on Customer's premises. Some Software is not available for use on all types of Authorized Hardware. Customer must notify EIS of changes to any Authorized Hardware. Customer may not share its usage of the Software by allowing other parties to time-share Customer's Authorized Hardware. Customer may use the Software only with the operating system listed on a Purchase Order. Not all Software will operate on all operating systems.

**3. Components.** Software components may be used only through the Software with which they are bundled and Customer may not use or deploy any individual component outside such bundle or as a replacement for other SAS software.

**4. Product Authorization Code.** Customer may allow Users to access only Software licensed to Customer for which Customer receives a Product Authorization Code. Customer shall not allow Users to install or attempt to use other products contained on media received pursuant hereto. The "Product Authorization Code" is a component of the Software that enables the Software to operate for the applicable license period. At each new license period, or if required as a result of changes in Authorized Hardware or Software, Customer must apply a new Product Authorization Code to keep the Software operating. EIS is not required to provide the Product Authorization Code if Customer is in breach of these terms or has not paid license fees. Customer may allow only Users to access the Product Authorization Code. Customer acknowledges and agrees that the Product Authorization Code is the confidential and proprietary information of EIS or EIS' licensors. Refunds are not available for Software licenses after a Product Authorization Code has been provided.

**5. Installations.** Unless otherwise set forth in a Purchase Order, each Software license entitles Customer to a single configured installation of the Software. For any Software offering designed for operation across multiple hardware tiers as described in its Documentation, the term "single configured installation" includes installation of subcomponents of the Software on multiple hardware tiers which operate together as a single configuration. For all other Software, "single configured installation" includes installation of the Software on a single item of Authorized Hardware or on the number of items of Authorized Hardware specified on the applicable Purchase Order.

**6. Back-up Installations.** In addition to the installations authorized in the applicable Purchase Order, Customer may install the Software on back-up hardware that is inactive or dormant ("Back-up Hardware"). If Customer wishes to implement a back-up system with Software that is operable or active, additional fees may apply. In the event the Software installed on the Authorized Hardware fails to operate due to unforeseen natural or human-induced events, Customer may activate the Back-up Hardware until the failure can be rectified. Customer must contact EIS prior to activating the Back-up Hardware to request a Product Authorization Code that will enable the Software to operate on the Back-up Hardware

**7. Copying.** Customer may copy the Software only for (a) disaster recovery and back-up purposes, and (b) installation of personal computer Software authorized hereunder. All copies remain the property of EIS' licensors. Customer may deliver a copy of the Software to a disaster recovery contractor to perform temporary disaster recovery work for Customer. Customer shall give EIS the name and address of the disaster recovery contractor before delivery and EIS will provide such information to EIS' licensor. The identical copyright notices and any other proprietary rights notices found on the original Software media must be reproduced on all copies authorized under this Section.

**8. Title; Source Code.** Notwithstanding anything else to the contrary, title to the Software and its documentation remains with EIS' licensors at all times. Copyright notices and other proprietary rights notices in the Software shall not be deleted or modified. These terms do not transfer any ownership rights. Source code from which the Software object code is derived ("Source Code") is not being provided and is a trade secret of EIS' licensors to which access is not authorized. Neither Customer nor any other User shall reverse engineer, reverse assemble or decompile the Software or in any way attempt to recreate the Source Code, except and only to the extent applicable laws specifically prohibit such restriction.

**9. Software Maintenance.** As long as customer pays maintenance fees, in the case of desktop and server based Software, or license fees, in the case of mainframe Software, EIS will use reasonable efforts, either by telephone, electronically or in writing, to help Customer solve specific problems with installation or use of the Software within the Territory. It may not be possible for EIS to solve all problems or correct all errors in the Software. From time to time, EIS may make available, and Customer agrees to use reasonable efforts to install, new releases, updates and corrective code. During ongoing Software development, EIS' licensors may add, change or delete individual components or functionality in new releases. Such Software modifications shall be subject to these Terms. If Customer chooses not to install the most current release of the Software, the level of technical support may diminish over time. EIS' obligations in this section are subject to the following: Customer shall: (a) when requesting technical support, notify SAS (as manufacturer of the Software) of any modifications to the Software not made by EIS, or at the direction of EIS; and (b) establish technical contacts with knowledge about the Software and Customer's use of the Software who will be qualified to provide EIS with information necessary for EIS to diagnose and remedy any problems with the Software. Failure to comply with these terms may result in longer response and resolution times. EIS will subcontract its technical support obligations under this Contract to SAS.

**10. Limited Warranties and Representations.**

10.1 EIS warrants that each production release of the Software shall substantially conform to its documentation including any updates thereto, and the Software and the media on which it is installed shall be free of software viruses when received by Customer. As the exclusive remedy for breach of these warranties, EIS, at its option, shall: (a) repair the Software; (b) replace the Software; or (c) terminate the Software license and refund the fees paid by Customer to EIS for the Software at issue during the then-current license period.

10.2 Notwithstanding anything else to the contrary, EIS and its licensors disclaim all other warranties, express or implied, including without limitation any implied warranties of merchantability or fitness for a particular purpose, or arising as a result of custom or usage in the trade or by course of dealing. Without limiting the generality of the foregoing, EIS does not warrant or represent that the Software will result in compliance, fulfillment, or conformity with the laws, rules, regulations, requirements or guidelines of any governmental agency.

10.3 Certain third party vendors, including SAS (collectively "Third Party Licensors") sublicense components to EIS which are contained in the Software. Such Third Party Licensors provide their Software "as is." Third Party Licensors are not liable for direct, special, incidental, indirect, consequential, punitive, or reliance damages (arising in tort or otherwise), or for any claim made against a Customer by any party even if they have been informed of the possibility of such damages. Nothing in this section nullifies EIS' express

warranties or liabilities relating to the Software, including Software components licensed by EIS from Third Party licensors under the Contract.

10.4 Software licensed by a Customer may be provided with certain free and open source software (“FOSS”) identified in the documentation or applicable Purchase Order. Customer’s right to use such FOSS shall be governed by the applicable FOSS license agreement instead of the terms of the Contract.

10.4 Customer shall (a) implement procedures to verify accuracy of data input and output while using the Software, (b) be responsible for ensuring that all data and software used with the Software is adequately duplicated, documented, and protected, (c) inform all parties authorized to use the Software of the relevant terms hereof and any related user documentation, and be responsible for their adherence to such terms, and (d) keep records of where the Software is installed and used and the extent of usage of the Software relative to the applicable pricing metrics and usage rights and provide a copy of such records to EIS upon request. Customer agrees that the Software and Services, in and of themselves, will not ensure compliance with laws.

**11. Exclusions of Damages; Limitation of Liability.** Limitation of Liability shall be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-4368. Neither EIS nor EIS’ licensors are liable for any claim against the Customer by a third party relating to use of the Software.

**12. Export and Import Restrictions.** EIS hereby notifies Customer that United States export laws and regulations apply to the Software. Customer agrees to comply with these and other applicable export and import laws and regulations. The parties expressly agree to exclude herefrom the United Nations Convention on Contracts for the International Sale of Goods.

**13. Audit.** Upon advance notice to a Customer, EIS (or its licensor on its behalf) will have the right to conduct an onsite audit during Customer’s normal business hours in order to verify compliance with the terms and conditions of this Contract.

**14. Services Terms.** The following additional terms shall apply to the provision of fixed price (“Fixed Price”) or time and materials (“T&M”) services (in either case, “Services”) as may be specified on a valid Purchase Order:

14.1 EIS grants Customer a nonexclusive, nontransferable, non-assignable, royalty-free license to use any documentation, computer code, deliverables (if specifically identified in an attachment or statement of work to a Purchase Order) or other materials delivered by SAS in connection with the Services (“Work Product”) only for the Software with which the Work Product operates and only for as long as Customer maintains a license for such Software. EIS has no obligation to provide continued support or maintenance for any Work Product. Ownership of the Work Product, including any intellectual property embodied therein, and any techniques, skills, concepts or know-how that are utilized or developed while performing the Services remains with EIS or its licensors. Prototype systems and sample programs furnished by EIS are designed to help Customer to use the Software and for demonstration purposes; they are not intended to be used for production purposes without appropriate testing by the recipient. EIS shall subcontract delivery of Services to SAS.

14.2 EIS warrants that the Services will be performed by qualified personnel in a workmanlike manner. The exclusive warranty law remedy for breach of this warranty is refund of fees paid for the Services at issue. EIS warrants that it has the right to license the Work Product to a Customer. The exclusive warranty law remedy for breach of this warranty is to (i) modify the Work Product, (ii) obtain rights for Customer to continue to using the



Work Product, or (iii) terminate the license for the Work Product at issue and refund the fees paid for the Services at issue. EIS' indemnification obligations and the disclaimers of warranty and exclusions of consequential damages and limitations of liability contained in the Contract also apply to any Work Product and Services. EIS disclaims all other warranties, express or implied, with respect to the Services and Work Product provided hereunder or the results obtained, including without limitation any implied warranties or conditions of merchantability or fitness for a particular purpose and those arising by statute or otherwise in law or from a course of dealing.

14.3 With respect to any T&M Services specified on a Purchase Order, the following apply: EIS will provide (a) the Services described in a Purchase Order (including any statement of work or attachment thereto), and (b) a limited license in relation to any Work Product. As used herein, the term "Time and Materials" means a consultative model where EIS provides Services on a T&M basis at the hourly rates identified on a Purchase Order. EIS' time and a limited license to any Work Product resulting from performance of any T&M Services are the only deliverables to be provided.

14.4 With respect to any Fixed Price Services specified on a Purchase Order, the following terms apply:

EIS will provide (a) the services described in an applicable Purchase Order (including any statement of work or attachment thereto), (b) the deliverables, if any, described in the applicable statement of work ("Deliverables"), and (c) a limited license to any Work Product. As used herein, the term "Fixed Price" means a pre-defined project model where EIS provides Fixed Price Services for a set fee.

Each party agrees to respond to the other in a timely fashion when acceptance of a Deliverable is pending. After delivery, Customer shall accept or reject a Deliverable within ten (10) business days. Failure to reject a Deliverable within this timeframe shall constitute acceptance of the Deliverable. Notice of a Customer's rejection of the Deliverable shall be provided to EIS in writing and shall specify the nature and scope of the deficiencies. In the case of rejection of the Deliverable, the parties agree to adhere to the following timeframes whenever reasonably possible in order to meet the schedule set forth above: EIS shall use reasonable efforts to respond to Customer within five (5) business days after receipt of the rejection notice describing the manner and timeframe in which EIS proposes to correct any deficiencies, or by actually correcting the deficiencies. In the former case, Customer shall use reasonable efforts to accept EIS' proposal for correcting any deficiencies within five (5) business days after receipt of EIS' proposal. Upon EIS' delivery of the corrected Deliverable, Customer shall use reasonable efforts to accept the Deliverable within five (5) business days. Customer's failure to accept a Deliverable or to accept EIS' proposal for correcting any deficiencies gives EIS the right to terminate the applicable Fixed Price Services and refund the fees paid for all Work Product Customer returns to SAS.

**Executive Information Systems, LLC**

**Customer**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX F TO DIR CONTRACT NO. DIR-TSO-4368

### Remote Managed Software and Services

The terms set forth in DIR Contract No. DIR-TSO-4368 and herein shall apply to any Remoted Managed Software and Service offerings specified on a Purchase Order. Additional technical services may also be required and must be further specified on a Purchase Order. A separate order for one or more SAS software products is a prerequisite to receive any RMSS.

#### 1. Definitions.

- 1.1. Application Monitoring Software means software specified by EIS and required to collect data to verify the availability and performance of the System.
- 1.2. Customer Materials means all data, authentication credentials, software, or other materials, including, but not limited to, Prerequisite Software and Application Monitoring Software, but excluding the Software, required for use in the System.
- 1.3. Customer Marks means Customer's trademarks, service marks or trade names that are reproduced or displayed in the System.
- 1.4. Issue Tracking System means the system specified by EIS and used to report, track and monitor issues associated with the Software and/or System.
- 1.5. Prerequisite Software means any third party software required for use with the Software as defined at <http://support.sas.com/resources/thirdparty-support/index.html>.
- 1.6. RMSS Term means the period specified in a Purchase Order during which EIS will perform Remote Managed Software and Services.
- 1.7. Software means the SAS software licensed by Customer pursuant to the Contract.
- 1.8. System means Customer's hardware, network and associated operating system software installed on Customer's premises as they operate together to provide the environment(s) where the Software operates.
- 1.9. System Outage – means any period of unavailability of the System.

#### 2. Remote Managed Software and Services. During the RMSS Term, EIS will perform the remote managed software and services activities as described below ("RMSS") for the environment(s) licensed under a Purchase Order. For the avoidance of doubt, Remote Managed Software and Services does not include services for the System or any other Customer infrastructure. Unless otherwise agreed by the parties, all Remote Managed Software and Services will be performed remotely. RMSS will be delivered by SAS as EIS' subcontractor. EIS may terminate RMSS to a Customer for its failure to adhere to the requirements of this Appendix.

#### 3. EIS Responsibilities.

- 3.1. EIS will perform initial remote installation and configuration of the Software on the System using a mutually agreed upon installation and configuration method.
- 3.2. EIS will provide a pre-installation checklist to Customer.
- 3.3. EIS will provide remote day-to-day operational support for the Software.
- 3.4. EIS will use the Application Monitoring Software to monitor the Software and System and collect metrics for event management, incident management, problem management and change management.
- 3.5. EIS will perform remote installation of Software hot fixes provided by SAS' Technical Support division applicable to the then-current release of the Software installed on the System.

Installation of new releases of the Software by EIS may require additional services subject to execution of a separate services agreement between the parties and payment by Customer of additional fees. Any data migration or customization services required as the result of installation of Software hot fixes or new releases are not included as part of Remote Managed Software and Services and, if performed by EIS, will be provided as additional services subject to execution of a separate services agreement between the parties and payment by Customer of additional fees. Any such additional services will be managed through a mutually agreed upon change management process.

4. Customer Responsibilities.

4.1. Facilities and Personnel. Customer will provide the following at no charge to EIS.

- 4.1.1. Customer will provide the required System to support the Software as defined in the Software system requirements document or specification provided by EIS.
- 4.1.2. Customer will provide adequate facilities, personnel, resources and equipment to support the System where the Software is installed that meet or exceed the environmental and operational instructions provided by the applicable equipment manufacturer.
- 4.1.3. Customer will conduct periodic security scans of the System and will take other reasonable security precautions to protect against the introduction of malware and computer viruses and to prevent unauthorized access to and usage of the System.
- 4.1.4. Customer will provide a Windows based terminal server for connection into the System. Customer must install related third party tools, or enable EIS to install such third party tools, including, but not limited, Putty, Winscp, or xWindows server and any other third party tools as instructed by EIS. The terminal server must provide access to EIS (or its subcontractor) via a virtual private network ("VPN") tunnel to enable EIS to provide Remote Managed Software and Services for the Software including access from Port 80 and 443 to EIS (or its subcontractor), access from EIS to terminal server Port 3389 and, for Linux based installations, access from EIS (or its subcontractor) to Port 22.
- 4.1.5. Customer will enable necessary ports to facilitate Application Monitoring Software as specified by EIS in the installation requirements.
- 4.1.6. Customer will make available to EIS the initial System environment within thirty (30) days of the Purchase Order. Customer will make available to EIS any additional System environment(s) specified in the Purchase Order on a schedule to be mutually agreed upon between Customer and EIS. Any delay by Customer in providing any System environment may result in work stoppage, resource redeployment and unplanned delays, none of which shall be considered a breach by EIS of the Contract. Any such delay may also result in additional fees payable by Customer.
- 4.1.7. Customer will provide adequate internal System space for continuous operation of the Software.
- 4.1.8. Customer will provide adequate connectivity to provide direct, dedicated, persistent site to site VPN ("Site-to-Site VPN") access as approved by EIS enabling EIS to access the System to perform the Remote Managed Software and Services in accordance with EIS' subcontractor's VPN policies and standards.
- 4.1.9. Customer will acquire a license for and will perform installation and configuration of any required Prerequisite Software and Application Monitoring Software.
- 4.1.10. Customer will download and make available to EIS the SAS Software Depot to enable EIS to perform remote installation of Software on the System.

- 4.1.11. Customer will download, upload or transfer files either to the System or to EIS that are required for installing hot fixes, supporting installation validation and reviewing System and Software logs for problem resolution purposes.
- 4.1.12. Customer will use the Issue Tracking System to report any issues associated with the Software or System.
- 4.1.13. Customer will provide to EIS System logging or reporting diagnostic data, and network diagnostic data, to enable EIS to review System activity and performance.
- 4.1.14. Customer will provide reasonable access to Customer's subject matter experts.
- 4.1.15. Customer will provide all necessary storage to support the data on in the System.
- 4.2. IT Service Management. EIS and Customer will mutually agree upon processes to support event management, incident management, problem management and change management, as applicable. Customer agrees not to make or to allow a third party to make changes to the System or the Software, including but not limited to changes to firmware or system configuration or installation of hotfixes or updates, without prior agreement from EIS via the established change management process. Changes to the System or Software without prior agreement from EIS may result in additional fees and may lead to outages, and unplanned delays which in no event shall be considered a breach by EIS of the Contract.
- 4.3. Backups. Customer will be responsible for all backups of the System, Software and Customer Materials on a regular basis. Customer will provide EIS with access to such back-ups as needed to enable EIS to perform the Remote Managed Software and Services. Customer will undertake appropriate backup, removal, verification and protection of any Software programs, databases and removable storage media.
- 4.4. Customer Materials.
  - 4.4.1. Customer will, at no charge to EIS, be responsible for: (a) providing EIS, in a mutually agreed upon format, all Customer Materials; (b) providing EIS all data sources and business rules necessary for input into the System; and (c) providing any Customer Marks that are to be reproduced or displayed in the System.
  - 4.4.2. Customer grants EIS a non-transferable, non-exclusive, royalty-free license to use the Customer Materials and Customer Marks solely for the purpose of performing the Remote Managed Software and Services. Where the Customer Materials include software, data or other materials licensed by Customer from a third party, Customer must obtain: (a) a license from the provider of the software, data or materials for EIS to use such software, data or materials to perform the Remote Managed Software and Services, and (b) prior written approval from EIS before such software, data or materials may be used in conjunction with the System. Title to Customer Materials and Customer Marks remains with Customer or its licensors at all times.
  - 4.4.3. If the Customer Materials require EIS to qualify, validate or undertake any other similar activities ("Qualification Activities") with respect to the System, EIS must first approve such Qualification Activities in writing prior to using the applicable Customer Materials with the System. Customer will direct each provider of such Customer Materials to provide to EIS, upon request from EIS or Customer, appropriate information to enable EIS to perform Qualification Activities with respect to the System as integrated with the Customer Materials. Additional fees may apply for any such Qualification Activities.
  - 4.4.4. EIS will have no obligation to provide any support, maintenance or upgrades pertaining to Customer Materials. Customer is solely responsible for providing or arranging for the provision of all such services, at no charge to EIS, including ongoing qualification.

Customer is responsible, at no charge to EIS, for providing or arranging for the provision of all upgrades for Customer Materials, including up-to-date virus protections, and will coordinate the timing of same with EIS. No warranties or indemnities made by EIS in the Contract will apply to Customer Materials.

4.4.5. If EIS is unable to process Customer Materials as a result of the unavailability of the Customer Materials, EIS will notify Customer and Customer will make available the missing Customer Materials or the corrected Customer Materials, as applicable. Unavailability of Customer Materials includes, but is not limited to: (a) Customer's failure to make available the Customer Materials to EIS in a timely manner; (b) Customer's providing corrupt, improperly formatted, incomplete or nonfunctional Customer Materials; or (c) Customer's altering the Customer Materials. EIS will process the submitted Customer Materials or corrected Customer Materials as soon as commercially practicable after they are made available, and will process any subsequently available Customer Materials sequentially thereafter, as applicable. EIS will notify Customer once any delays in the availability of the Software or System related to Customer Materials are resolved. Any unavailability of the System or the Software resulting from Customer Materials shall not be considered a breach by EIS of the Contract.

4.4.6. EIS reserves the right to disengage and take Customer Materials offline in the event of any emergency situation, or any threat or perceived threat to the System related to the Customer Materials. Any resulting adverse performance impact to the System attributable to any such disengagement shall not be considered a breach by EIS of the Contract.

4.4.7. Customer is solely responsible for Customer Materials.

#### 4.5. Customer Warranties.

4.5.1. Intellectual Property Warranty. Customer warrants: (a) that it has the right to license the Customer Materials and the Customer Marks to EIS; (b) it has obtained from the applicable provider of the Customer Materials the right for EIS to use the Customer Materials as required for the performance of the Remote Managed Software and Services; and (c) that Customer's use of the Customer Materials complies with all applicable license terms, terms of use and other usage terms as set forth by the providers of such materials.

4.5.2. Compliance Warranty. Customer warrants that the publication, transmission, and receipt of all Customer Materials complies with all applicable local, state, and federal laws and regulations, including, without limitation, laws relating to trademarks, copyrights, defamation, consumer protection, personal privacy, and false or deceptive trade practices.

5. System Access Privileges. Customer will grant EIS remote access to the System as needed to enable EIS to perform the Remote Managed Software and Services. Customer will also grant EIS reasonable on-site access to Customer's data center and the System as may be necessary to enable EIS to perform any Remote Managed Software and Services which cannot be performed remotely. Where required, Customer will provide elevated access permission, including, but are not limited to, sudo to root privileges for mutually agreed upon commands.

#### 6. Maintenance Outages.

6.1. System Maintenance Outage. Subject at all times to Section 4.2 (IT Service Management), Customer may conduct system maintenance services that will result in a System Outage ("System Maintenance Outage."). The System will be unavailable to Customer and to EIS during a System Maintenance Outage. Customer will use reasonable efforts to notify EIS using the Issue Tracking System at least seven (7) days prior to a planned System Maintenance Outage.

6.2. Facility Maintenance Outage. Customer or EIS may conduct locally planned or globally planned routine or preventative facility maintenance services at its facilities that may result in a System Outage (“Facility Maintenance Outage.”) The System may be unavailable to Customer and to EIS during a Facility Maintenance Outage. Each party will use reasonable efforts to notify the other party using the Issue Tracking System at least seven (7) days prior to a planned Facility Maintenance Outage affecting the System.

6.3. Software Maintenance Outage. EIS will conduct Software maintenance that may result in a System Outage and/or a Software Outage (“Software Maintenance Outage”). EIS will use reasonable efforts to notify Customer using the Issue Tracking System at least seven (7) days prior to any planned Software maintenance that may result in a Software Maintenance Outage.

7. Disclaimer of Actions Caused by, or Under the Control of, Customer or Third Parties. EIS exercises no control over the flow of information to or from the System, EIS’ (or its subcontractor’s) network, or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by Customer or third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the Internet or portions of such connections. Although at all times during the RMSS Term EIS will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, EIS cannot guarantee that such events will not occur. **ACCORDINGLY, EIS DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO ALL SUCH EVENTS AND ANY OTHER ACTIONS OR INACTIONS CAUSED BY OR UNDER THE CONTROL OF CUSTOMER OR A THIRD PARTY.**

Executive Information Systems, LLC

Customer

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

## **APPENDIX G TO DIR CONTRACT NO. DIR-TSO-4368 HOSTING SERVICES**

The terms set forth in DIR Contract No. DIR-TSO-4368 and herein (the “Terms”) shall apply to the following Hosting Services offerings in addition to those terms set forth elsewhere in DIR Contract No. DIR-TSO-4368 (the “Agreement”). Each Hosting Services offering is subject to the limitations on System capacity, users, Random Access Memory (RAM) and storage noted in the parenthetical information in following list.

- (a) Hosting for SAS® Analytics Environment – Small (The System will include an computing environment containing up to four (4) processor cores, thirty two (32) gigabytes (GB) of RAM and up to five hundred (500) GB of data storage capacity; The System is limited to access and use by no more than ten (10) total Users (not concurrent) who access the System during the applicable license Term, of which Users no more than three (3) may be concurrent Users; and Customer shall not exceed the foregoing limits.)
- (b) Hosting for SAS® Analytics Environment – Medium (The System will include an computing environment containing up to twelve (12) processor cores, ninety six (96) GB of RAM and up to two and a half (2.5) terabytes (TB) of data storage capacity; The System is limited to access and use by no more than fifty (50) total Users (not concurrent) who access the System during the applicable license Term, of which Users no more than thirteen (13) may be concurrent Users; and Customer shall not exceed the foregoing limits.)
- (c) Hosting for SAS® Analytics Environment – Large (The System will include an computing environment containing up to sixteen (16) processor cores, one hundred twenty eight (128) GB of RAM and up to five (5) TB of data storage capacity; The System is limited to access and use by no more than one hundred (100) total Users (not concurrent) who access the System during the applicable license Term, of which Users no more than twenty five (25) may be concurrent Users; and Customer shall not exceed the foregoing limits.)
- (d) Hosting for Standalone SAS® Visual Analytics Environment – Small (The only SAS software product that may be installed in this System is SAS® Visual Analytics and must be purchased as a separate order; If Customer desires to combine other SAS software products with SAS® Visual Analytics software then Customer is required to purchase an additional Hosted Service offering for the hosting of such other SAS software products; The System will include an computing environment containing up to sixteen (16) processor cores, two hundred fifty six (256) GB of RAM and up to one (1) TB of data storage capacity; The System is limited to access and use by no more than five (5) total Users (not concurrent) who access the System during the applicable license Term, of which Users no more than two (2) may be Power Users; and Customer shall not exceed the foregoing limits.)
- (e) Hosting for Standalone SAS® Visual Analytics Environment – Medium (The only SAS software product that may be installed in this System is SAS® Visual Analytics and must be purchased as a separate order; If Customer desires to combine other SAS software products with SAS® Visual Analytics software then Customer is required to purchase an additional Hosted Service offering for the hosting of such other SAS software products; The System will include an computing environment containing up to sixty four (64) processor cores, one thousand twenty four (1024) GB of RAM and up to four (4) TB of data storage capacity; The System is limited to access and use by no more than ten (10) total Users (not concurrent) who access the System during the applicable license Term, of which Users no more than two (2) may be Power Users; and Customer shall not exceed the foregoing limits.)
- (f) Hosting for Standalone SAS® Visual Analytics Environment (The only SAS software product



that may be installed in this System is SAS® Visual Analytics and must be purchased as a separate order; If Customer desires to combine other SAS software products with SAS® Visual Analytics software then Customer is required to purchase an additional Hosted Service offering for the hosting of such other SAS software products; The System will include an computing environment containing up to one hundred twenty eight (128) processor cores, two thousand forty eight (2048) GB of RAM and up to eight (8) TB of data storage capacity; The System is limited to access and use by no more than fifteen (15) total Users (not concurrent) who access the System during the applicable license Term, of which Users no more than two (2) may be Power Users; and Customer shall not exceed the foregoing limits.)

A separate order for one or more SAS software products available under the Agreement is a prerequisite to any order hereunder for SAS® Analytics Hosting Services. Hosted Services offerings are available hereunder only in connection with licenses for the following SAS software products:

- SAS Analytics Pro
- SAS Data Quality Standard
- SAS Data Management Standard
- SAS Enterprise BI Server
- SAS/ETS
- SAS/OR
- SAS/QC
- SAS/STAT
- SAS Forecast Server
- SAS Enterprise Miner
- SAS Text Miner
- SAS Credit Scoring for Enterprise Miner
- SAS Access Interface to [X] (See the corresponding contract Pricing Index for available SAS ACCESS products; All such available SAS ACCESS products may be hosted)
- SAS Model Manager

Vendor (also referred to in these Terms as EIS) is the sole authorized government reseller of SAS Institute Inc. ("SAS"). The services set forth below will be provided to Customer by SAS as subcontractor to EIS. Capitalized terms have the meanings contained in Section 1 (Defined Terms) or within the text throughout or in an executed Order Form.

## **1. Defined Terms.**

- 1.1. Business Day means Monday through Friday, 8:00 AM to 5:00 PM eastern time, excluding holidays observed by Customer or EIS.
- 1.2. Customer Marks means Customer's trademarks, service marks or trade names that are reproduced or displayed in the System.
- 1.3. Customer Materials means all Permitted Data, authentication credentials, software (approved by EIS) and other materials made available to EIS or its subcontractor by Customer for use in the System.

- 1.4. Customer Service Provider means any contractor engaged by Customer to perform services associated with any part of the System.
- 1.5. Fees means, collectively, the Hosting Services Fees and the Additional Services Fees.
- 1.6. Hosting Services means the hosting services specified in Attachment A and the applicable Order Form that SAS will perform for Customer pursuant to each executed Order Form.
- 1.7. Hosting Services Fees means the fees payable by Customer as detailed in an executed Order Form for SAS' provision of the Hosting Services.
- 1.8. Order Form means the Customer purchase order that Customer and EIS agree upon in order for Customer to engage Hosting Services, subject to the terms of the Agreement.
- 1.9. Permitted Data means (a) Customer's data derived from Customer's operations in the Territory, excluding data aggregated from other sources, including, but not limited to, data from Customer's related entities; (b) data purchased, licensed or leased from a third party by Customer; and (c) publicly available data (for example, national census data).
- 1.10. Personal Data means any information relating to an identified or identifiable natural person that (a) is included in the Customer Materials; or (b) relates to Users and is received by SAS in connection with the performance of the Hosting Services or Additional Services.
- 1.11. Power User means a User who may access the System during the applicable license period to use the full functionality of the Software.
- 1.12. Purpose means the purpose for which Customer is authorized to use the System as detailed in the applicable Order Form.
- 1.13. System means the software, documentation and Third Party Products, together with the applicable SAS computer hardware, as they operate together for the Hosting Services pursuant to an executed Order Form.
- 1.14. Term means (a) with respect to each Order Form, the period during which EIS or its subcontractor will perform Hosting Services as detailed in the applicable Order Form and (b) with respect to the Agreement, the period from the date of last signature below until the first to occur of (i) the date the Agreement is terminated in writing in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-4368 or (ii) all Order Forms have expired or have been terminated. If an Order Form does not state the period in which EIS will perform the Hosting Services, then the Order Form will be deemed to include a statement that EIS will perform the Hosting Services for a period of one (1) year from the date of such Order Form.
- 1.15. Territory means the United States.
- 1.16. Third Party Products means any software or data which is licensed by SAS from a third party and included as part of the System for Customer's use and benefit as an end-user of the System and which is not part of a generally available SAS software product. SAS' licensors of certain Third Party Products require that Customer accept certain terms and conditions as set forth in Attachment B to this Hosting Agreement.
- 1.17. Users means the named employees of Customer and Customer's contractors who have access to the System to perform work for Customer for the Purpose. The number of Users authorized to access the System is specified in the list above. Each Customer shall be responsible for making Users aware of the limitations on use with respect to the Software and System set forth herein.

## **2. Agreement Structure; System Access Rights; Customer Materials.**

- 2.1. Agreement Structure. DIR Contract No. DIR-TSO-4368 and the Agreement governs the performance of Hosting Services. An Order Form must be accepted EIS to become effective.
- 2.2. System Access Rights. In exchange for Customer paying the Fees arising under the applicable Order Form and subject to the limitations contained in the Agreement, EIS grants Customer the right for Users to access and use the System from and within the Territory for the benefit of Customer's operations in the Territory in connection with the Purpose during the Term of the applicable Order Form. Customer may use any documentation provided by EIS solely in support of Customer's authorized use of the System and receipt of the Hosting Services. Notwithstanding anything in the Agreement to the contrary, Customer's right to access the System shall be limited to the Term specified in the Order Form.

Customer may use the System or request that EIS use the System on Customer's behalf to process only Permitted Data and/or data provided by EIS under an Order Form as Third Party Products. Customer may not use the System, nor request that EIS use the System on Customer's behalf, in a data service provider, application service provider, solution service provider or marketing service provider arrangement, nor in any similar arrangement for which Customer provides results derived from use of the System to third parties, including, but not limited to, Customer's related entities, nor may Customer use such results for the benefit of third parties or Customer's related entities.

Except to the extent allowed by law, Customer may not use the System nor permit any other party or entity to use the System to develop a commercial offering or product directly or indirectly competing with an offering or product from EIS.

EIS is not liable for any damage it incurs arising from or related to use of the System by any User, Customer Service Provider or by any other party Customer allows to access the System, in a manner which is inconsistent with the terms and conditions of the Agreement or which violates EIS' rights under any applicable laws including, but not limited to, any laws that protect EIS' intellectual property rights.

- 2.3. Rights to Customer Materials. Customer grants EIS and its licensors a non-transferable, non-exclusive, royalty-free right to use the Customer Materials and the Customer Marks for the purpose of performing the Hosting Services during the Term of the applicable Order Form.

## **3. Hosting Services.**

- 3.1. Hosting Services. Upon acceptance of an Order Form, EIS shall provide the Hosting Services described in Attachment A and the applicable Order Form. Customer will assign a technical project manager for the Order Form.

## **4. Invoicing and Payment.**

- 4.1. Invoicing. EIS will invoice Customer for the Hosting Services Fees and Additional Services Fees, in accordance with the schedule specified in the applicable Order Form and Appendix C, Pricing Index in DIR Contract No. DIR-TSO-4368. Customer is required to pay all of the fees in an invoice regardless of whether Customer continues to access and use the System throughout the applicable Term.

## **5. Technical Support.**

EIS will provide technical support services as described in Attachment A.

## **6. Ownership.**

The Agreement does not transfer any ownership rights. Neither party shall delete, obscure or modify the other party's proprietary rights notices.

**7. Warranty Disclaimers.**

**EXCEPT AS OTHERWISE SPECIFIED IN ATTACHMENT A OR AS EXPRESSLY STATED IN AN ORDER FORM EXECUTED HEREUNDER, EIS AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EIS AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT USE OF THE SYSTEM WILL RESULT IN COMPLIANCE, FULFILLMENT OR CONFORMITY WITH THE LAWS, RULES, REGULATIONS, REQUIREMENTS OR GUIDELINES OF ANY GOVERNMENTAL AGENCY. EIS' LICENSORS PROVIDE THEIR SOFTWARE "AS IS."**

**8. Warranties and Responsibilities of Customer.**

8.1. Intellectual Property Warranty. Customer warrants: (a) that it has the right to grant to EIS the right to use the Customer Materials and the Customer Marks to EIS; (b) it has obtained from the applicable provider of the Customer Materials the right for EIS and its subcontractor to host and use the Customer Materials in accordance with Section 8.4 (Customer Materials) of Attachment A hereto; and (c) that Customer's use of the Customer Materials complies with all applicable license terms, terms of use and other usage terms as set forth by the providers of such materials.

8.2. Compliance Warranty. Customer warrants that the publication, transmission and receipt of all Customer Materials complies with all applicable local, state and federal laws and regulations, including, without limitation, laws relating to trademarks, copyrights, defamation, consumer protection, personal privacy and false or deceptive trade practices.

8.3. No Viruses. Customer will not introduce any viruses into the System through the Customer Materials or otherwise.

**9. Security.** EIS will implement and maintain reasonable technical and organizational security measures that are designed to (i) protect against unauthorized System access and usage, and (ii) to protect Personal Data against unauthorized access, use, alteration, destruction or disclosure. Customer agrees that it will comply with any System usage rules or other security guidelines and procedures that are specified in this Appendix, an Order Form, or that are otherwise made known by EIS to Customer through the System.

**10. Data Protection.**

**10.1. Processing Purposes; Customer Instructions.** EIS will use Personal Data only for the purposes of: (a) setting up, operating, monitoring and providing the System for use by Customer and Users; (b) providing the Hosting Services or Additional Services; (c) communicating with Users and Customer Service Providers; and (d) executing other agreed-upon written instructions of Customer.

**10.2. Customer Obligations; Sensitive Information.**

10.2.1. Customer will be responsible for providing any required notices and obtaining any required consents for the collection, use, processing, transfer and disclosure of Personal Data in connection with Customer's use of the System and EIS' provision of the

Hosting Services and Additional Services.

- 10.2.2. Customer will notify EIS in the event any Personal Data is subject to laws or regulations requiring specific deletion practices or retention periods.
- 10.2.3. Except to the extent specified in an Order Form, the Customer Materials will not include any (a) government-issued personal identification numbers (including but not limited to social security numbers, driver's license numbers, and passport numbers) (b) credit or debit card numbers, personal identification numbers (PIN), passwords or other electronic identification numbers or other information a person uses for payment or to access personal or financial information; (c) any patient, medical or other protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996 or any similar national or state laws, rules or regulations; (d) any Personal Data concerning residents of the European Union that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or criminal record or history, or that concerns an individual's health or sex life or (e) any classified data or technical data controlled by the International Traffic in Arms Regulations (collectively, "Sensitive Information").

**10.3. EIS Obligations**

- 10.3.1. EIS will comply with (to the extent applicable) the SAS Solutions OnDemand Business Customer Privacy Policy, which is available at [http://www.sas.com/en\\_us/legal/on-demand-privacy.html](http://www.sas.com/en_us/legal/on-demand-privacy.html) and is subject to change within reasonable discretion; however, changes will not result in a material reduction to the level of protection provided by EIS for such Personal Data during the Term.
  - 10.3.2. EIS will ensure that employees and contractors, including those of its subcontractor, authorized to process Personal Data are subject to appropriate confidentiality obligations.
  - 10.3.3. Through the use of appropriate technical and organizational measures, EIS will assist Customer in fulfilling Customer's obligation to respond to requests by individuals to exercise their rights under applicable law with respect to Personal Data. EIS will, as necessary under such applicable law, and at Customer's expense, either (i) provide Customer with the ability to correct, delete or block Personal Data stored in the System, or (ii) make such corrections, deletions or blockages on Customer's behalf.
  - 10.3.4. EIS will cooperate in good faith, at Customer's expense, in response to Customer's detailed and reasonable requests for assistance in complying with Customer's specific mandatory obligations under applicable law with respect to Personal Data but only to the extent that such obligations directly relate to the Hosting Services or Additional Services and Personal Data stored in the System. Customer will be solely responsible for fulfilling such obligations, including without limitation, making or obtaining any third-party notifications, filings, or approvals.
- 11.** Subject to record retention policies and laws, upon expiration of the Term of an Order Form, EIS will cause its subcontractor to delete from the System or otherwise render inaccessible Personal Data and all copies thereof stored in the System, unless Customer notifies EIS prior to EIS' receipt of such Personal Data that the Personal Data is subject to laws or regulations requiring specific deletion practices or retention periods and such requirements are specified in the Order Form. Without limiting the generality of this Section, Customer agrees that EIS may (i) retain one copy of the Personal Data as necessary to comply with legal, audit or internal requirements; and (ii) defer the

deletion (or rendering inaccessible) of the Personal Data to the extent and for the duration that any Personal Data of copies thereof cannot reasonably and practically be expunged from the System and for such deferred period the “Security” and “Data Protection” provisions of the Agreement will continue to apply to such Personal Data

## **12. Term, Termination, and Expiration.**

Except as otherwise provided below in this Section, the Agreement will remain in effect so long as an Order Form remains in effect. Each Order Form hereunder constitutes a separate agreement for Hosting Services (incorporating the terms of this Agreement and its attachments) and will remain in effect according to its terms. This in no way prejudices either party’s right not to renew an Order Form upon expiration of its committed Term.

If Customer desires to obtain Hosting Services under an Order Form beyond the expiration of its Term, the parties may (a) negotiate an amendment to the applicable Order Form or negotiate a new Order Form which shall include the applicable Fees and other terms negotiated by the parties or (b) renew the applicable Order Form up to three one year terms by Customer providing Vendor thirty days written notice prior to then-expiration date. Such additional renewal periods shall be included in the Term of the applicable Order Form.

## **13. Confidentiality.**

To the extent allowable under the Texas Public Information Act, each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, products and other information held in confidence by the other party (individuality or collectively, "Confidential Information"). To the extent allowable under the Texas Public Information Act, Confidential Information also shall include the Customer Materials as well as all information of either party in tangible or intangible form that is marked or designated as confidential.

The receiving party (“Recipient”) shall use the disclosing party’s (“Discloser”) Confidential Information received in connection with the Agreement only in conjunction with performance of its obligations under the Agreement. Recipient shall not disclose Discloser’s Confidential Information received in connection with the Agreement to any third parties unless Discloser gives Recipient its advance written authorization to do so. This restriction does not apply to information that is: (a) generally available to the public; (b) released by Discloser without restriction; (c) independently developed or acquired by Recipient; (d) known to the Recipient prior to receipt from Discloser; or (e) revealed pursuant to court order or as required by applicable law, provided that Recipient uses reasonable efforts to promptly notify Discloser of such requirement prior to compliance in order to permit Discloser to seek protection against disclosure. Recipient’s obligations of confidentiality hereunder with respect to each item of Discloser’s Confidential Information shall continue for a period of five (5) years from the date of initial disclosure. For the purpose of this Section, EIS’ parent company, if applicable, subsidiaries and subcontractors shall not be deemed "third parties.”

## **14. General.**

14.1. Severability. If a court of competent jurisdiction finds any part of the Agreement to be unenforceable, that part is excluded but the remainder of the Agreement stays in full force and effect to the greatest extent permitted by applicable law.

14.2. No Waiver. Failure to require compliance with a part of the Agreement is not a waiver of that part. Nothing in this Subsection waives any remedy either party may have under the Agreement at law, in equity or otherwise.

- 14.3. Injunctive Relief. Breach of either party's intellectual property rights or confidentiality rights may lead to damages not adequately remedied by an award of money; therefore, the parties have the right to seek to protect these rights through temporary restraining orders or prohibitory injunctions. The parties further agree that any such equitable relief shall be without prejudice to any other rights accruing to them under the Agreement.
- 14.4. Survival. All provisions of the Agreement relating to proprietary rights, indemnification, confidentiality, disclaimer of warranty or limitation of liability shall survive the termination of the Agreement.
- 14.5. Tangible Media. No tangible media will be delivered under the Agreement.
- 14.6. Export and Import Restrictions. EIS hereby notifies Customer that the System is of United States of America ("United States") origin and United States export laws and regulations apply to the System. Both parties agree to comply with these and other applicable export and import laws and regulations. EIS will be solely responsible for compliance by EIS and its agents and representatives who access the System. Customer will be solely responsible for compliance by all other parties who access the System, including Users and Customer Service Providers. Customer's compliance obligations include ensuring: (a) that no International Traffic in Arms Regulations ("ITAR") data or other data controlled for export by agencies, other than the Bureau of Industry and Security or the Office of Foreign Assets Control, is imported into or used within the System; (b) that there is no access, download, export, re-export, import, or distribution to or of the System or any underlying information, technology or data except in full compliance with all laws and regulations of the United States and in full compliance with any other applicable laws and regulations; and (c) compliance with restrictions of countries other than the United States related to exports and imports. United States export classification information for EIS' licensor's software can be found at the website located at <http://support.sas.com/adminservices/export.html>. By accepting the Agreement and using and/or, if authorized, downloading SAS software or accessing the System, Customer agrees to the foregoing and represents and warrants that (i) neither Customer nor any User is a party to whom the United States prohibits access to SAS software or the System; (ii) neither Customer nor any User is located in, under control of, or a national or resident of any country to which export of SAS software or the System is restricted by laws of the United States or other applicable laws and regulations, including E:1 countries (currently Cuba, Iran, North Korea, Syria, and Sudan); (iii) neither Customer nor any User will use SAS software or the System in activities directly or indirectly related to the proliferation of weapons of mass destruction; (iv) neither Customer nor any User will share access to SAS software or the System with a party identified in this paragraph; and (v) neither Customer nor any User shall further export SAS software or the System without a license or other authorization from the United States.

## **ATTACHMENT A**

### **Hosting Services**

The rights and obligations described in this Attachment A shall apply individually to each Order Form.

1. **Hosting Services**. During the Term of each applicable Order Form, EIS will perform, either directly or through its third party provider(s), the following Hosting Services:
  - 7 X 24 IT systems monitoring;

- infrastructure for the Hosting Services, including hardware, floor space, network and power;
  - environment, including air conditioning;
  - physical and logical security;
  - operating system updates;
  - regularly-scheduled back-ups; and
  - SAS software and Third Party Products administration including installation of new generally available releases of SAS software and Third Party Products, application of hot fixes to SAS software provided by SAS' Technical Support division and application of hot fixes to Third Party Products provided by the Third Party Products' vendor, as required by EIS or requested by Customer. Any resulting data migration, configuration, or customization is not included as part of SAS software and Third Party Products administration and will be provided as Additional Services subject to Customer's payment of applicable Additional Services Fees.
2. **Facilities.** The hardware used to host the System will be housed at an internet data center ("Internet Data Center"), which will consist of data center quality space with uninterruptible power systems ("UPS") protection, physical security, and fire suppression. Nothing is intended to or will constitute a lease to Customer of any real property with respect to the Internet Data Center.
3. **Backups.** EIS will perform regular backups of Customer Materials and Work Product stored within the System ("Backups"). Backups will be stored securely for specified periods and will be restored by EIS in the event of System failure, corruption or accidental removal or deletion caused by EIS. Restoration of Backups for reasons other than System failure or corruption or the actions of EIS may be performed at Customer's request but may incur additional fees.
4. **Technical Support.** During the Term of the applicable Order Form, EIS will provide technical support to Customer for any SAS software included in the System in accordance with its policies at <http://support.sas.com/techsup/support.html> which policies may be updated from time to time. Technical support for Customer Materials, if any, will be the responsibility of the provider of the Customer Materials. The provider of Customer Materials may contact EIS on behalf of Customer in conjunction with technical support issues in the event such provider believes the issue to be connected to the System.
5. **System Access Privileges.** Only those Users and Customer Service Providers expressly authorized by Customer will have the right to access the System. Customer will provide, through the EIS approved authentication and authorization interface, contact information for each such User and Customer Service Provider, including company name, first name, last name, and email address. Customer will only provide such information of its Users and Customer Service Providers as it is authorized to do so. Customer will secure the written consent of each User and Customer Service Provider before providing such information to EIS.
6. **Service Level Warranty for Hosting Services.**
- 6.1. **Definitions.**
- 6.1.1. **Downtime** means any period of unavailability of the System due to EIS' failure to provide Hosting Services for such period, excluding any such period of unavailability due to a Planned Outage, any outage due to Customer Materials or any outage beyond EIS' reasonable control.



- 6.1.2. Planned Outage means any outage resulting in unavailability of the System due to maintenance activities associated with the System or the Internet Data Center or any other outage as scheduled by EIS.
- 6.1.3. Service Credit means, with respect to this Order Form, an amount equal to 0.5% of the Hosting Services Fees for the current annual period or One Thousand Dollars (\$1,000.00), whichever is greater, up to a maximum of Two Thousand Five Hundred Dollars (\$2,500.00).
- 6.1.4. System Maximum Monthly Downtime means seven (7) hours of Downtime per calendar month, which has been calculated based on a ninety-nine percent (99%) up-time level for the System.
- 6.2. Service Level Warranty. EIS warrants that the System will experience no more than the System Maximum Monthly Downtime during each calendar month during the Term of this Order Form provided all required Customer Materials are submitted to EIS by Customer in accordance with the Agreement ("Service Level Warranty"). EIS will cause its subcontractor to monitor the Hosting Services and determine Downtime. This Service Level Warranty will not commence until the System has been released for production use and will continue until the expiration or earlier termination of the Term of the applicable Order Form.
- 6.3. Applicability.
  - 6.3.1. The Service Level Warranty applies to Customer's production System(s) only and specifically excludes any telecommunications lines.
  - 6.3.2. The Service Level Warranty will not apply to: (a) any modification of the System by anyone other than EIS or its subcontractors; (b) Additional Services or technical support; or (c) any performance issues: (i) attributable to any cause described in the Force Majeure section of the Contract; (ii) that resulted from any actions or inactions of Customer or any third parties outside of EIS' or its subcontractor's control including, but not limited to third party provider(s); (iii) that resulted from Customer's equipment and/or third party equipment (not within the sole control of EIS or its representatives); (iv) that resulted from Customer's failure to comply with the System Usage Rules set forth in this Attachment A; (v) attributable to the Customer Materials; or (vi) attributable to Third Party Products.
  - 6.3.3. If EIS is unable to process Customer Materials as a result of the unavailability of the Customer Materials, EIS will notify Customer and Customer will make available the Customer Materials or the corrected Customer Materials, as applicable. Unavailability of Customer Materials includes, but is not limited to, (a) Customer's failure to make available the Customer Materials in a timely manner; (b) Customer's providing corrupt, incomplete or nonfunctional Customer Materials; or (c) Customer's altering the Customer Materials. EIS will process the Customer Materials or corrected Customer Materials as soon as commercially practicable after they are made available, and will process any subsequently available Customer Materials sequentially thereafter, as applicable. EIS will notify Customer once any delays in the availability of the System are resolved. Any delays in the availability of the System occurring as a result of the Customer Materials will not be deemed a breach of the Service Level Warranty and EIS will not be liable for providing Customer with any Service Credits.
  - 6.3.4. Any unavailability of the System occurring as a result of matters identified below in Section 6.4 (Planned Outages) or Section 6.5 (Temporary Service Suspensions) will not

be deemed a breach of the Service Level Warranty and EIS will not be liable for providing Customer with any Service Credits.

- 6.4. Planned Outages. The System may be unavailable during a Planned Outage. EIS will use reasonable efforts to provide Customer with at least three (3) days' notice prior to a Planned Outage that will limit Customer's access to the System.
- 6.5. Temporary Service Suspensions. Customer's access to any portion or all of the System may be suspended if EIS reasonably determines that: (a) there is a threat or attack on the System (including a denial of service attack) or other event that may create a risk to the System, the Internet Data Center or any of its tenants, Customer or any other EIS or SAS customer; (b) Customer's use of the System or the Customer Materials disrupts or poses a security risk to the System or any other EIS or SAS customer, may harm the System, the Internet Data Center or any of its tenants, or any other EIS or SAS customer, or may subject EIS, its subcontractor, or any third party to liability; (c) Customer is using the System for fraudulent or illegal activities; (d) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or has become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (e) Customer is using the System in breach of the Agreement; or (f) Customer is in default of its payment obligations hereunder and there is an unusual spike or increase in Customer's use of the System (collectively, "Service Suspensions"). EIS will use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and will provide updates regarding resumption of availability of the System following any Service Suspension. EIS will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Customer may incur as a result of any Service Suspension and Customer will not be entitled to Service Credits for any Service Suspension.
- 6.6. Service Credits. Service Credits will apply to Customer's production System(s) only. EIS will provide Customer with one (1) Service Credit for any calendar month in which the System Maximum Monthly Downtime is exceeded, provided that Customer requests each such Service Credit within seven (7) days of the end of such calendar month. Customer's failure to request a Service Credit within this timeframe will result in forfeiture of the Service Credit for that month. Any Service Credits received by Customer will be applied to reduce the immediately succeeding invoice for Hosting Services Fees, unless the Service Credit is due in the final period of the Term, in which case EIS will refund to Customer the amount available as a Service Credit.
- 6.7. Maximum Service Credits. Notwithstanding anything contained above in Section 6.6 (Service Credits) to the contrary, the maximum number of Service Credits available to Customer with respect to an applicable Order Form during the Term will be four (4) for each annual period.
- 6.8. Termination. Customer may terminate this Order Form for cause and without penalty in the event Customer receives a total of four (4) Service Credits during any annual period under this Order Form and EIS has exceeded the System Maximum Monthly Downtime under an Order Form in any subsequent calendar month during such annual period, provided Customer notifies EIS of its intention to terminate within five (5) days of the end of such subsequent calendar month.
- 6.9. Exclusive Remedies. Sections 6.6 (Service Credits), 6.7 (Maximum Service Credits) and 6.8 (Termination) state Customer's sole and exclusive remedy for any noncompliance with the Service Level Warranty. **EIS AND ITS LICENSORS MAKE NO WARRANTY THAT THE SYSTEM WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION OR THAT ANY DATA TRANSMISSIONS TO, FROM, OR THROUGH THE SYSTEM**

**WILL BE COMPLETELY SECURE; PROVIDED, HOWEVER, THAT EIS WILL UTILIZE THE SECURITY MEASURES DESCRIBED IN SECTION 7 (SECURITY) BELOW.**

7. **Security.** EIS will take reasonable technical and organizational security measures, as described in this Section, that are designed to protect against unauthorized System usage or access. Customer agrees that the security architecture specified below will be deemed to be reasonable security precautions. EIS will provide Customer with the standard security offering described below at no additional charge over the Hosting Services Fees.

7.1. **Network and Logical Security.**

- Firewall Security:
  - Firewalls establish secure gateways.
  - Logging and address translation are all accomplished at the firewall.
  - Firewall configurations deny services until successful authentication.
  - Firewall access is restricted to secure access connections.
  - Changes to firewalls must be approved.
  - Configuration changes are monitored daily.
  - Logging of deny records only.
- Web applications within the System are accessible via authorized IPs (not exposed to the Internet) unless otherwise specified in the relevant Order Form.
- A security log management system that includes firewall logs is maintained.
- Routers and load balancers are configured to allow only necessary protocols to be routed to specific hosts.
- Anti-virus software used (Microsoft servers).
- Protection from unauthorized access:
  - Firewalls and routers are controlled via access control lists.
  - Server configurations record details about accesses.
  - Privileged access and authentication logs are regularly monitored and reviewed.
- System hardening.
- Daily threat assessment subscription.
- Vulnerability assessment performed on Internet-facing assets.
- System patch management - System center configuration manager:
  - Review, approve, and install patches and security updates as required.
- Privileged access for Customer environments:
  - Quarterly reviews of privileged access;
  - System administrator access is conducted through a secure connection.

7.2. **Physical Security.**

- Restricted access.
- Badge readers and multi-factor authentication.
- Badges must be worn and visible at all times.
- Access transaction report.
- Camera monitoring.
- Visitor access logging.
- Backup power supply.
- Fire suppression systems and monitoring.
- Environmental systems monitor and alert to humidity and temperature.
- Multiple Internet providers/gateways.

#### 7.3. Personnel Security.

- Access to a hosting instance is available only after successful entry of a unique combination of User ID and password using strong password policies.
- Access to the hosted solutions will be restricted to those Users who require access.
- All Users must login with a User ID and password and require encrypted protocols over public networks.

#### 7.4. Data Security.

- Non-public Customer Materials must be sent to EIS' subcontractor via encrypted protocols except where specifically agreed otherwise in writing by the parties.
- Customer Materials are logically separated within the hosting environment.
- Access to Customer Materials is limited according to the principle of least privilege.
- Backups are securely maintained.

#### 7.5. Security Testing.

- SSAE 16 Service Organization Control (SOC 2 and 3) Type II audits completed annually by a third party.
- Global network penetration test conducted annually. Penetration test results are considered SAS' Confidential Information.
- Penetration tests performed for new and significantly-changed production applications that are exposed to the Internet.

#### 7.6. Other Security Measures.

- System administrator authorization and server authentication will be employed as measures to protect data transfers. For externally facing access, server authentication will be accomplished using digital certificates issued by DigiCert or other reputable certifying authority.

8. **System Usage Rules.** These System usage rules ("Rules") cover Users' access to and use of the System. In the context of this Section, the term "Users" will include all Customer Service Providers

who are authorized to access the System. Customer agrees that Users will adhere to and abide by all of these Rules and other written reasonable guidelines provided to Customer from time to time. EIS reserves the right to terminate or limit use of the System without notice in the event of any unauthorized access to or use of the System.

8.1. Access to the System. Customer will make available and maintain an appropriate and mutually agreed upon communications link and any other technology or hardware required for the System to operate properly between Customer and EIS' subcontractor. Any proxy services that are external to Customer must be sanctioned by Customer and approved by EIS' subcontractor before they may be used to access the System. Only Users may access the System. Customer will provide prior written notice to EIS of any changes to the User information and the list of Users. EIS will issue initial passwords, User IDs, and/or other verification codes (collectively "Passwords") to each User of the System. Thereafter, Passwords will be maintained by the User or designated Customer administrator who is an employee of Customer. Customer will not permit Users to allow any unauthorized person to have access to the System or their respective Passwords. Users will be responsible for maintaining the confidentiality of their respective Passwords and will notify EIS immediately upon becoming aware of any loss or theft of their Password or any unauthorized use of such Password.

8.2. Use of the System. Customer and Users will not:

- misuse or abuse any EIS, its subcontractor, or third party property (including, without limitation, software, equipment, networks, and network devices);
- make any unauthorized use of or interfere with any property of EIS, its subcontractors, or any EIS or SAS customer;
- engage in any activity in violation of the law or that aids or assists any criminal activity in connection with the access or use of the System;
- impair or disrupt any connections to the System;
- interfere or attempt to interfere in any manner with the functionality or proper working of the System;
- remove, obscure or alter any notice of ownership or any other intellectual or proprietary right appearing on or contained within the System;
- use any open source software in connection with the System in any manner that requires, pursuant to the license applicable to such open source software, that any part of the System be (a) disclosed or distributed in source code form; (b) made available free of charge to recipients; or (c) modifiable without restriction by recipients;
- reverse engineer, disassemble or decompile any part of the System; or
- upload any software or application(s) to the System except as expressly allowed subject to Section 8.4 (Customer Materials) of this Attachment A.

8.3. Prohibited Activities. Customer will not, and will not permit any User to, use the System to do any of the following:

- send unsolicited marketing material or communications in any form (commonly referred to as "SPAM");
- engage in any activities or actions that infringe or misappropriate the intellectual property rights of others, including, but not limited to, using third party copyrighted materials without

appropriate permission, using third party trademarks without appropriate permission or attribution, or using or distributing third party information protected as trade secret information in violation of a duty of confidentiality;

- engage in any activities or actions that would violate the personal privacy rights of others, except as permitted by applicable law;
- send or transmit harassing, abusive, libelous, or obscene materials or assist in any similar related activities;
- intentionally omit, delete, forge, or misrepresent transmission information, including headers, return mailing, and Internet protocol addresses;
- engage in any activities or actions intended to misuse or abuse Users' Passwords or other Confidential Information;
- use the System for any illegal purpose, in violation of any applicable laws or regulations, or in violation of the rules of any other service provider engaged by or for the benefit of Customer; or
- assist or permit any person to engage in any of the activities described above.

If Customer becomes aware of any prohibited activities described in this Section, Customer will use reasonable efforts to remedy such activities promptly, including, if necessary, limiting or terminating a User's access to the System, and inform EIS of such activities.

#### 8.4. Customer Materials.

- 8.4.1. Customer will be responsible for: (a) providing EIS, in a mutually agreed upon format, all Customer Materials required by Customer and (b) providing SAS all data sources and business rules necessary for input into the System unless otherwise provided in this Order Form. Failure by Customer to make available to EIS any required Customer Materials within the mutually agreed upon format and timeframe may result in a delay in EIS' provision of the Hosting Services and/or Additional Services. Any schedule changes resulting from such delays will be managed through a change control process and additional Fees may apply.
- 8.4.2. Where the Customer Materials include software and/or data licensed by the Customer, Customer must obtain (a) a license from the software and/or data provider for EIS to host and use such software and/or data and (b) prior written approval from EIS before such software and/or data may be used in conjunction with the System.
- 8.4.3. At Customer's request, EIS may make available certain third-party websites within the System ("Third Party Websites"). EIS disclaims all responsibility for the availability or security of the Third Party Websites and for any content that appears on the Third Party Websites. All such content will be deemed Customer Materials.
- 8.4.4. Customer will ensure that its use of the Customer Materials that Customer and Users store, collect, transmit, and receive, by or through the System, complies with all applicable laws, regulations and these Rules, and that Customer's use of such Customer Materials does not violate the license terms, terms of use, or other usage terms as set forth by the providers of such Customer Materials.
- 8.4.5. Prior to transmitting any data to EIS, Customer will complete and submit to EIS any applicable data classification form(s) as provided by EIS to Customer. Customer will

transmit Customer Materials to EIS only using methods that have been designated by EIS for that purpose. If any Sensitive Information is sent to EIS or its subcontractor in violation of the Agreement, Customer will reimburse EIS for such costs as may be incurred to extract, delete, remove and otherwise expunge or sequester such information from the System (collectively "Deletion Activities"). EIS will have no liability whatsoever for any loss of or damage to such Sensitive Information associated with such Deletion Activities. EIS has the right, but undertakes no obligation, to monitor the Customer Materials.

8.4.6. If Customer requires EIS to assist with qualification or validation activities related to the System, EIS must approve such activities in writing prior to their implementation. Customer will provide to EIS the appropriate information to enable EIS to qualify or validate the System as integrated with the Customer Materials. Additional fees may apply for any such qualification or validation activities.

8.4.7. EIS will have no obligation to provide any support, maintenance or upgrades pertaining to Customer Materials. Customer will be solely responsible for providing or arranging for the provision of all such services. Customer will be responsible for providing or arranging for the provision of all upgrades for Customer Materials, including up-to-date virus protections, and will coordinate the timing of the same with EIS. No warranties or indemnities made by EIS in the Agreement will apply to Customer Materials.

8.4.8. EIS reserves the right to disengage and take Customer Materials offline in the event of any emergency situation or any threat or perceived threat to the System related to the Customer Materials. EIS will not be responsible for any adverse performance impact to the System or Downtime attributable to Customer Materials or to any such disengagement. EIS will not be responsible for any compromises to the confidentiality, integrity, or availability of the System or of any Customer Materials that are attributable in whole or in part to Customer's use of Third Party Websites or Customer Materials.

8.5. Customer Service Providers. Customer will notify EIS prior to engaging any Customer Service Provider to perform services with respect to the System. Access to the System by all Customer Service Providers is subject to EIS' prior consent which will not be unreasonably withheld. EIS reserves the right to conduct reasonable background checks on all Customer Service Providers. All Customer Service Providers must sign a non-disclosure agreement and any other agreement as reasonably required by EIS prior to accessing the System provided, however, that Customer will remain responsible for any access to the System by Customer Service Providers in any manner that is inconsistent with the terms and conditions of the Agreement or that violates EIS' rights under any applicable laws including, but not limited to, any laws that protect EIS' licensors' intellectual property rights. Any computer code or documentation delivered by Customer Service Providers will be considered Customer Materials and will be subject to the terms and conditions of the Agreement, including Section 8.4 (Customer Materials) of this Attachment A. EIS reserves the right to charge Customer additional Fees for any efforts required of EIS with respect to services provided by Customer Service Providers.

8.6. Modification of Rules. SAS may change these Rules upon thirty (30) days' notice to Customer, which notice may be provided by posting such new Rules on the System.

9. Security Audit. A Customer employee or an independent third party auditor mutually acceptable to both parties ("Auditor") may conduct, at Customer's expense, one (1) postal or on-site audit during the Term of an Order Form to verify that EIS is in compliance with its security and data protection obligations under the Agreement ("Security Audit"). Customer will conduct on-site Security Audits

at SAS' corporate headquarters in Cary, North Carolina, USA during SAS' normal business hours. Neither EIS nor SAS will be required during such Security Audit to disclose any information relating to other customers or to third parties. Customer must provide EIS and SAS with at least thirty (30) days' written notice prior to conducting an on-site Security Audit. On-site Security Audits must not interfere with SAS' normal business operations and will not exceed three (3) SAS Business Days. The Auditor must sign a confidentiality agreement with SAS prior to conducting the Security Audit and will comply at all times with SAS' security rules, policies and procedures. SAS will cooperate with the Auditor by: (a) making applicable records available; (b) providing copies of such records as requested for review by the Auditor on SAS' premises; and (c) directing SAS employees to reasonably cooperate. Customer may request additional Security Audits during the Term of an Order Form provided, however, that Customer may not conduct more than one (1) Security Audit during any twelve (12) month period. Notwithstanding the foregoing, exceptionally, and subject to the other conditions of this Section, Customer may conduct a Security Audit more than one (1) time in a twelve (12) month period if required by applicable law, an order of a regulatory authority, or as otherwise agreed by SAS.

10. **Disclaimer of Actions Caused by, or Under the Control of, Third Parties.** Neither EIS nor its subcontractors exercise any control over the flow of information to or from the System, SAS' network, or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the Internet or portions of such connections. Although at all times during the Term, EIS will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, EIS cannot guarantee that such events will not occur. **ACCORDINGLY, EIS DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO ALL SUCH EVENTS AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ANY OTHER ACTIONS OR INACTIONS CAUSED BY OR UNDER THE CONTROL OF A THIRD PARTY.**
11. **Additional Termination Rights.** EIS may suspend Customer's access to and use of the System immediately upon written notice to Customer, and terminate an Order Form upon thirty (30) days prior written notice (if Customer fails to cure any of the conditions in (a) through (c) below within such thirty (30) day period) if it reasonably determines that: (a) Customer's use of the System or the Customer Materials poses a security risk to the System or any other EIS or SAS customer, may harm the System or any other EIS or SAS customer, or may subject EIS or SAS or any third party to liability; (b) Customer is using the System for fraudulent or illegal activities; or (c) EIS' continued provision of System to Customer is prohibited by applicable law. Additionally, in the event any third party provider terminates an agreement pursuant to which EIS or its subcontractors has acquired rights to use facilities or services necessary to provide the Hosting Services, EIS may, at its option, by providing at least ninety (90) days' notice to Customer, either (a) terminate this Order Form or (b) relocate the System to an alternate Internet Data Center and/or obtain other alternate facilities or services to enable EIS' continued provision of the Hosting Services. In the event EIS terminates an Order Form in accordance with the immediately prior sentence, EIS will refund to Customer a pro rata portion of any Hosting Services Fees paid by Customer under such Order Form calculated from the date of termination through the end of the Term covered by such payment.



## **ATTACHMENT B**

### **Terms and Conditions Applicable to Certain Third Party Products**

#### **Microsoft Corporation Software Products**

The following terms apply, in addition to the terms and conditions of the Agreement, in the event Customer uses software owned by Microsoft Corporation (the “Microsoft Product,” singularly, or the “Microsoft Products,” collectively) as provided by EIS in conjunction with the System. In the event of a conflict between the following terms and the terms and conditions of the Agreement, the following terms shall control.

- (i) Customer may not remove, modify or obscure any Microsoft copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Products. Customer may not use any Microsoft logos in any manner whatsoever;
- (ii) Customer may not reverse engineer, decompile or disassemble the Microsoft Products except to the extent that such activity is expressly permitted by applicable law;
- (iii) Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect or consequential, arising from the Microsoft Products;
- (iv) EIS or a third party on EIS’ behalf (and not Microsoft or its suppliers) will provide technical support for the Microsoft Products;
- (v) EIS and its subcontractor are required to submit periodic reports to Microsoft containing information about end users of the Microsoft Products. Customer understands and agrees that these reports may include Customer’s name, location and basic information about Customer’s usage of the Microsoft Products within the System. This disclosure is an exception to any confidentiality obligation EIS or its subcontractor may have to Customer under any related agreement;
- (vi) Microsoft shall be deemed a third party beneficiary to the Agreement with the right to enforce the terms of the Agreement and to verify Customer’s compliance with the terms of the Agreement with respect to the Microsoft Products.
- (vii) **No High Risk Use.** The Microsoft Products are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. Customer may not use the Microsoft Products in any application or situation where the Microsoft Products’ failure could lead to death or serious bodily injury of any person or to severe physical or environmental damage (“High Risk Use”). Examples of High Risk Use include, but are not limited to: aircraft or other modes of human mass transportation; nuclear or chemical facilities; life support systems; implantable medical equipment; motor vehicles; or weaponry systems. High Risk Use does not include utilization of Microsoft Products for administrative purposes, to store configuration data, as engineering and/or configuration tools, or for other non-control applications the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control but must not be directly or indirectly responsible for the control function; and
- (viii) Microsoft may remove or discontinue any Microsoft Product at any time. In such event, EIS will no longer offer such Microsoft Product for Customer’s use.

**Executive Information Systems, LLC**

**Customer**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**Amendment Number 1**  
**to**  
**Contract Number DIR-TSO-4368**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Executive Information Systems, LLC**

This Amendment Number **1** to **Contract** Number **DIR-TSO-4368** ("**Contract**") is between the Department of Information Resources ("DIR") and Executive Information Systems, LLC ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Appendix C Pricing Index** is hereby replaced in its entirety with the attached **Appendix C Pricing Index (per Amendment 1)**.

All other terms and conditions of the Contract as amended, not expressly amended herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 1, and then the Contract.

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**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature.

**Executive Information Systems, LLC**

**Authorized By:** Signature on File

**Name:** Jonathan Ward

**Title:** Jonathan Ward, Contracts Manager

**Date:** 10/23/2020

**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:** 10/28/2020

**Office of General Counsel:** MH Signature on File, 10/28/2020



Executive Information Systems, LLC  
Texas DIR4 Quotation

Quote #:	EIS-01628-T4K5	Texas DIR4 Contract #:	DIR-TSO-4368
Rev #:	3	Quote Effective From:	3/4/2022
Renewal Start Date:		Quote Valid Thru:	4/30/2022
Renewal End Date:		Site Id:	

Prepared For:

Name: Sandi Joralemon  
Account: New Braunfels Utilities  
Location:

Email: sjoralemon@nbutexas.com  
Phone: (830) 608-8941  
Fax:

Line	OEM Part #	Description	Qty	Unit Price	Extended Price
1	SAS-MULTI-SVC	EIS will use the applicable DIR rate for the given year during the Term of 1/1/2022 to 7/31/2025 and all roles itemized on TSO-DIR-4368 Appendix C and Amendment 1 to support the work effort. These respective rates will be applied and renewed annually to the not-to-exceed budget of \$421,000 over the Term.	1	\$421,000.00	\$421,000.00
2	TRAVEL	Travel Expenses to be billed in accordance with the SAS Travel Policy. Travel estimate not to exceed \$40,000.	1	\$40,000.00	\$40,000.00
Sub-Total					\$461,000.00
Sales Tax (If Applicable)					\$0.00
Total Quote Amount					\$461,000.00

The SAS Quotation Attachment is hereby incorporated into this quote and must be made part of any resulting order.

\*\*\*Please reference quote number on your order.

Point of Contact: Bruce Atkins  
Email: BAtkins@execinfosys.com  
Phone: 301-581-1083  
Fax: 301-581-2573  
Toll Free: 877-EXECINFO



**Executive Information Systems, LLC**  
**Texas DIR4 Quotation**

**Ordering Address**

Executive Information Systems, LLC  
Attn: Sales  
6901 Rockledge Drive, Suite 600  
P.O. Box 34076  
Bethesda, MD 20827-0076

**Remittance Address**

Executive Information Systems, LLC  
Attn: Sales  
6901 Rockledge Drive, Suite 600  
P.O. Box 34076  
Bethesda, MD 20827-0076

Contract#: DIR-TSO-4368 Expiration: 04/04/2023

Type of Business: Corporation (Limited Liability Company)

Payment Terms: Net 30 Days

Federal Tax Id #: 52-2198860

Dun & Bradstreet #: 938289527

CAGE Code: 1NM64

FOB Point: Destination

Delivery: 1 - 30 days after receipt of order

Discounts: Prices are net. All discounts have been deducted.

EIS qualifies as a small business under the Information Technology Value Added Reseller exception to NAICS 541519.

However, EIS subcontracts 100% of software, maintenance, training and services to SAS Institute, Inc., a large business.

Thus, EIS does not meet limitations on subcontracting requirements (FAR 52.219-14, 13 CFR 125.6) or the nonmanufacturer rule (13 CFR 121.406).

The terms and conditions of Texas DIR4 DIR-TSO-4368 held by Executive Information Systems, LLC apply to any license of SAS Institute Inc. software products and any purchase of SAS Institute Inc. services or support/maintenance, including any open market license or purchase. These terms and conditions can be found at [www.execinfosys.com](http://www.execinfosys.com) or are available upon request. Any additional or different terms and conditions received with, or incorporated by reference in, any customer purchase order or other customer purchase documentation are expressly rejected and inapplicable to any such license or purchase.

## SAS Customer Care Consulting Services Attachment 1

This is an Attachment to Quotation No. EIS-01628-T4K5 (the "Quotation") issued by Executive Information Systems LLC ("EIS") to New Braunfels Utilities ("NBU") for the procurement of consulting services (the "Services," which includes Customer Care Services, as defined below) performed by SAS Institute Inc. ("SAS") with regard to separate licensed SAS software products (the "Software"). The procurement of the Services included in the Quotation and any resulting order ("Order") from NBU to EIS for such Services shall be purchased pursuant to the Order, subject to the terms of State of Texas Department of Information Resources ContractNo. DIR-TSO-4368 ("DIR Contract") held by EIS and the terms of this Attachment. The terms of this Attachment change such DIR Contract only to the extent set forth herein, and only with regard to any such contract established by the Order. The DIR Contract and this Attachment shall be specifically incorporated in, and made a part of, the Order by reference. No other terms shall be included in the Order.

### 1. The following shall apply to the Services:

Pursuant to the Customer Care Program, EIS shall provide remote technical services, solutions support and knowledge transfer to assist Customer in addressing performance and maintenance issues related to various SAS tools and/or solutions.

This program is adaptable to NBU's individual SAS technology needs by allowing NBU to customize the type of Services it wishes to obtain from EIS associated with the Software. EIS shall then supply NBU with experienced on-site and off-site technical consulting resources to address those specific needs, such as resolving technical problems, tackling issues associated with the Software and assisting NBU with special technology projects. The Customer Care Program may include, but is not limited to the following activities:

- Creation of automated dashboards, ad-hoc analysis, forecast and machine learning models;
- create and automate data management processes;
- provision of ongoing general support and maintenance of Software;
- assistance with installing upgrades and updates of Software;
- assistance with Software and solution conversions and migrations;
- provision of knowledge transfer with respect to Software;
- creation of customized modules for current SAS solutions to better utilize SAS solution capabilities and leverage core functionality;
- automation of program, system or application processes;
- addressing technical support issues that require extensive analysis or on-site assistance;
- modifying Software configuration settings due to IT infrastructure changes;
- rollout of Software to additional departments or individual users;
- provision of general project management coordination associated with Software;
- identification of opportunities for better utilization of current Software; and
- assistance in the planning for future Software subprojects and deployments.

The Customer Care Program does not include the following activities:

- Building any prototypes or proofs of concept; and
- performing onsite customized user training.

The following assumptions apply to the performance of the Services:

- If SAS accesses NBU's computing environment to provide the Services, NBU shall provide such access solely via NBU's VPN, Remote Desktop Protocol (RDP), or any other remote connection with multi-factor authentication and scoped access to data (the "Connectivity Tool"). SAS shall use the Connectivity tool regardless of whether such access occurs remotely, at NBU's facility, or using SAS' or Customer's laptops or hardware. Customer will use the Connectivity tool to limit and control SAS' access to the systems and data required for SAS to perform the Services.
- SAS shall assist NBU in adhering to NBU's internal change management policy as it relates to the promotion of SAS work product to NBU's Production environment. NBU is ultimately responsible for adherence with NBU's internal change management policy.
- SAS agrees to comply with DIR Contract No. DIR-TSO-4368 Appendix A Standard Terms and Conditions for Products and Related Services contracts, Section 8(F) Travel Expense Reimbursement.

#### Financials Estimate

- Consulting hours for all roles itemized on DIR-TSO-4368 Appendix C and Amendment 1 to be billed at their applicable DIR rate for the given year during the Term on a Time and Materials basis for the Services herein. These respective rates will be applied to the not-to-exceed budget of \$421,000.



**Additional Terms and Conditions under  
Texas DIR-TSO-4368**

between

**Executive Information Systems,  
LLC**

**(“Vendor” or “EIS”)**

6901 Rockledge Dr.

Suite 600. PO Box 34076

Bethesda, MD 20827-0076

and

**New Braunfels Utilities**

**(“Customer” or “NBU”)**

263 Main Plaza

New Braunfels, Texas 78130

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Vendor and Customer agree as follows. Effective as of the date of the last signature below (the “Effective Date”), this Texas Department of Information Resources (“DIR”) Contract DIR-TSO-4368 (“DIR Contract”) for cooperative purchases for specific services from EIS is incorporated by reference into and made part of these Additional Terms and Conditions (the “Agreement”). The Agreement will govern the purchases and orders and each statement of work (SOW) that are provided to NBU from Vendor that are made during the term of DIR Contract with Vendor for a customer care consulting services agreement. The Customer is an eligible purchaser of the offerings under the DIR Contract, which is publicly available on the DIR website at:

[Executive Information Systems, LLC | Texas Department of Information Resources](#)

This Agreement shall become effective on the Effective Date and shall remain in effect for an initial term of twelve (12) months thereafter (the “Term”), unless extended via written mutual agreement between Customer and EIS. This Agreement may be extended beyond the initial term for up to two (2) additional one-year terms. The Vendor shall be paid a total not-to-exceed amount of \$153,666.67 for the initial contract term and \$153,666.67 for the first option period, and \$153,666.66 for the second option period. Cumulative purchases under this Agreement including all terms shall not exceed \$461,000.00.

Per the DIR Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the DIR Contract. Promptly, upon execution of this Agreement and upon future request from NBU, provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

Notwithstanding Section 10. Data Protection from Appendix G to the DIR Contract, in the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a cybersecurity event or breach, the Vendor shall notify NBU immediately. Before NBU will allow Vendor access to the NBU network after a cybersecurity event or breach, Vendor shall provide NBU with: (1) an audit of the systems compromised to be completed by an independent firm unaffiliated with Vendor and (2) evidence that the Vendor’s system is no longer a threat to the NBU network.

This Agreement and all of the rights and obligations of the parties shall be governed by and enforced under the laws of the State of Texas and the United States, as applicable. In the unlikely event any such situation may be necessary, the venue for any mediation and litigation under this Agreement shall be in Comal County, Texas. The parties agree to communicate and cooperate to resolve any concerns prior to starting any formal dispute resolution.

NBU and Vendor agree to reference the applicable current DIR Contract for quotations, purchase orders, and SOWs that are for offerings available from Vendor under the DIR Contract. The parties also agree to cooperate to resolve any administrative issues for proper processing of orders and billing related to this Agreement. This Agreement is entered into on behalf of the parties by their below authorized representatives:

<b>Vendor: Executive Information Systems, LLC</b>	
Signature: <b>Snaevar Hreinsson</b>	<small>Digitally signed by Snaevar Hreinsson DN: cn=Snaevar Hreinsson, o=EIS, ou=Contracts, email=shreinsson@execinfosys.com, c=US Date: 2022.02.22 09:52:19 -05'00'</small>
Name: Snaevar Hreinsson	
Position: Sr. Director Contracts & Compliance	
Date: 02/22/2022	

<b>Customer: New Braunfels Utilities</b>	
Signature:	<i>Doc Evans</i>
Name:	D. R. Evans
Position:	Manager
Date:	3/14/2022