

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR PRODUCTS AND RELATED SERVICES**

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

**1. Introduction**

**A. Parties**

This Contract for products and related services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and International Business Machines Corporation (“Vendor”), with its principal place of business at 1 New Orchard Road, Armonk, New York, 10504.

**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-399, on May 16, 2017, for IBM Branded, Fujitsu Branded and Panasonic Branded Products and Related Services and Cloud Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-399 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 Business Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Relationship Agreement; Appendix E, Cloud Services Agreement; Appendix F, International Passport Advantage Agreement; Appendix G, Attachment for Multivendor Information Technology Recovery Services; Appendix H, Master Services Attachment for ServiceElite; Appendix I, E-rate Agreement; Appendix J, Statement of Work Template, Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-399, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-399, 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, then Appendix G, then Appendix H, then Appendix I, then Appendix J, 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 three (3) optional one-year renewal. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party 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 include IBM branded products and such third party products as indicated in Appendix C, Pricing Index, and as may otherwise be agreed to by the parties in a Statement of Work. Vendor may incorporate changes to their IBM branded products and third party product offering; however, any changes must be within the scope of products awarded based on the solicitation described in Section 1.B above.

Third Party Products are those hardware, peripherals, accessories and software by other manufacturers or publishers that may be used as an attachment or embedded within an IBM Branded product to create, enhance or extend the functionality of IBM Branded product; or to create, enhance or extend the functionality of the authorized third party product which relies on an IBM branded product platform to function.

Vendor will provide the updated third party products list to DIR on a monthly basis or as soon as available, whichever comes first. Vendor may not add a manufacturer's product without pre-approval of DIR.

**B. Services**

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

**4. Pricing**

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 (0.75%). 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.

**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 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:

Eric Rice  
International Business Machines Corporation  
7100 Highlands Pkwy  
Smyrna, GA 30082  
Phone: (770) 863-1572  
Fax: (800) 242-6329  
Email: [erice2@us.ibm.com](mailto:erice2@us.ibm.com)

**7. License, Services and Leasing Agreements**

**A. 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 if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**B. Vendor Agreements**

Services provided under this Contract shall be in accordance with Vendor Agreements as set forth in Appendices D-J of this Contract (Appendix D, Customer Relationship Agreement; Appendix E, Cloud Services Agreement; Appendix F, International Passport Advantage Agreement; Appendix G, Attachment for Multivendor Information Technology Recovery Services; Appendix H, Master Services Attachment for ServiceElite; Appendix I, E-rate Agreement; Appendix J, Statement of Work Template). No changes to the Vendor Agreements' terms and conditions may be made unless previously agreed to by Vendor and DIR.

**C. 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 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 4, General Provisions, Subsection I, Data Location**, is hereby added to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts:

Regardless of any other provision of this Contract or its incorporated or referenced documents, all of the data for State of Texas Customers identified by the State as requiring their data to remain in the continental United States will remain therein by utilization of the Vendor's Enhanced Support Services option for those specific Customers requesting it, or by the Customer specifically selecting a Data Center located in the continental United States for their data location. A State of Texas Customer can specifically request otherwise. For all local governments and education customers within the State of Texas, as well as Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers.

NOTE: CLIENTS SHOULD CONSIDER WHETHER THEY REQUIRE CONTINENTAL US-ONLY DATA LOCATION AND HANDLING AND MAKE VENDOR AWARE OF THEIR REQUIREMENTS.

- B. **Appendix A, Section 4, General Provisions, Subsection J, Confidentiality**, is hereby added to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts:

a. This Section 4 protects confidential information (Confidential Information) while maintaining each party's ability to conduct its respective business activities. The following terms apply when one party (Discloser) discloses Confidential Information to the other (Recipient) under the Agreement.

b. The Recipient of Confidential Information agrees to use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate. Confidential information should be marked with a restrictive legend of the Discloser. If Confidential Information is not marked with such legend or is disclosed orally, the Confidential Information will be identified as confidential at the time of disclosure.

c. The Recipient may disclose, publish, disseminate, and use information that is: 1) already in its possession without obligation of confidentiality; 2) developed

independently; 3) obtained from a source other than the Discloser without obligation of confidentiality; 4) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or 5) disclosed by the Discloser to another without obligation of confidentiality.

d. The Recipient may disclose Confidential Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order.

e. The receipt of Confidential Information under this contract does not preclude Recipient from (i) assigning its employees in any way it may choose; or (ii) developing, manufacturing, marketing or providing products or services which may be competitive with products or services of Discloser, or entering into any business relationship with any other party.

f. The duty of Recipient to maintain the confidentiality of Confidential Information disclosed pursuant to this section continues for ten (10) years following the initial date of disclosure. Longer confidentiality terms may be included in an SOW. Nothing in this section negates a Recipient's obligations under relevant data privacy laws.

**C. Appendix A, Section 5, Intellectual Property Matter** is hereby restated in its entirety as follows:

The Customer will own the copyright in works of authorship that Vendor develops for the Customer under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to the Customer, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A program is an example of an Existing Licensed Work and is subject to the program terms. In any Statement of Work: 1) Vendor must specifically identify to Customer any Existing Licensed Works that are or will be incorporated into Vendor's deliverables; and 2) Vendor must use reasonable efforts to specifically identify to Customer any Existing Licensed Works that will be necessary for Customer's use of the Project Materials to be provided to Customer under the Statement of Work. Vendor grants the Customer an irrevocable (subject to Customer's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. Vendor retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials, subject to Vendor's duties of confidentiality, if any, inherent in the content of the Project Materials.

**D. Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, 3)** is hereby restated in its entirety as follows:

- 3) If pricing for products or services available under this Contract are provided by the Vendor at a lower price to: (i) the National Cooperative Purchasing Alliance (NCPA), (ii) the NASPO Value Point and its participating member agreements, (iii) the U.S. General Services Administration (“GSA”), (iv) Vendor’s State of Georgia Server Contract (SWC90813), or (v) Vendor’s State of Georgia Software Contract (99999-SPD-SPD0000060), then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies only to the contracts delineated above with regards to Vendor’s list prices (less any applicable discount) for products for a quantity of one (1) under like terms and conditions, and does not apply to volume discount/rebate purchase programs, or the like. This Contract shall be amended within ten (10) business days to reflect the lower price, which will be available for future transactions only.

**E. Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices** is hereby restated in its entirety as follows:

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

**F. Appendix A, Section 9, Contract Administration, C. Records and Audit, the last sentence of subsection 3)** is hereby restated in its entirety as follows:

If Vendor is found to be responsible for inaccurate reports resulting in improper charges, DIR may invoice for the reasonable costs of the audit, upon which Vendor will either provide DIR with a credit for the agreed upon charges, or must pay within thirty (30) calendar days of receipt of the invoice, at DIR’s option.

**G. Appendix A, Section 9, Contract Administration, C. Records and Audit, a new subparagraph 5)** is hereby added as follows:

5) Person performing audits will comply with reasonable and necessary security procedures to the extent that these do not interfere with the performance of auditors’ functions. For the avoidance of doubt, the foregoing does not permit a DIR Customer to access records related to Vendor’s personnel, profits, internal cost data, or other customers.

**H. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 2) ACTS OR OMISSIONS** is hereby restated in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES, FROM AND AGAINST 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 CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF SUCH CLAIM.

**I. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 3) INFRINGEMENTS** is hereby restated in its entirety as follows:

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 that a product or service acquired under this Agreement infringes any United States patents, copyrights, and trade and service marks in 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, DAMAGES, AND ATTORNEYS' FEES FINALLY AWARDED BY A COURT AGAINST CUSTOMER, OR AS INCLUDED IN A SETTLEMENT AGREEMENT APPROVED BY VENDOR. 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 OF 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, (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement; or (vi) the distribution, operation or use of the product for the benefit of a third party outside Customer's entity.

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.



**J. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 4) PROPERTY DAMAGE** is hereby restated in its entirety as follows:

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY REAL OR TANGIBLE PERSONAL PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES OR SUBCONTRACTORS FOR WHICH SUCH PARTIES ARE LEGALLY LIABLE, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF SUCH PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE REASONABLY 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.

**K. Appendix A, Section 10, Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel** is hereby restated in its entirety as follows:

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 preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the advance or otherwise timely 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 promptly terminate its Purchase Order and related Service Agreement/Statement of Work.

**L. Appendix A, Section 10, Vendor Responsibilities, J. Background and/or Criminal History Investigation** is hereby restated in its entirety as follows:

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 Vendor upon the Customer's request. Such background and/or criminal history investigation will be conducted in accordance with Vendor's standard policies/procedures, and consist of the following:

- 1) identify federal, county and/or state felony and misdemeanor arrest and convictions, including sentences of deferred adjudication;
- 2) include a search of a national criminal database;
- 3) validate the Social Security Number of the employee; and
- 4) search government sanction registry listings.

unless otherwise agreed to under a SOW. Customer should review these policies/procedures carefully. Vendor and Customer may agree to other means or methods if necessary to satisfy Customer's needs or obligations. 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 request replacement of the employee or subcontractor in question.

**M. Appendix A, Section 10, Vendor Responsibilities, K. Limitation of Liability** is hereby restated in its entirety as follows:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's aggregate liability for damages of any kind under the Contract other than for claims for third party patent, trademark or copyright infringement ("IP Claims") shall be limited to the lesser of: (A) thirty-six times the average monthly amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action; or (B) \$20,000,000 ("Liability Cap"). To the extent (i) Vendor provided data disaster recovery or data back-up services as specified in a SOW and the damage Customer suffered under the SOW was loss of or damage to data due to Vendor's breach of contract or breach of warranty obligations under the SOW, or (ii) Vendor provided Machines as defined in the Customer Relationship Agreement attached as Appendix D and IBM breaches its warranty in CRA Section 4(c) that the Machines used in their specified operating environment conform to their official published specifications and the damage Customer suffered was loss of or damage to data due to Vendor's breach of such warranty, then subject to the Liability Cap Customer may recover the cost of recreating the lost or damaged data to the last available back-up copy. Vendor's aggregate liability under the Contract for IP Claims payments due under Section 10(A)(3) (Vendor Responsibilities; Indemnification; Infringements) shall not exceed \$25,000,000. However, the forgoing limitations of Vendor's liability shall not apply to a Party's misuse, unauthorized disclosure or misappropriation of the other party's Confidential Information in breach of the first party's obligations under Section 4.J, Confidentiality, and liability for such confidentiality breaches may include damages associated with violation of State or Federal law and any penalty of any kind lawfully assessed as a result of such violation. Customer's should evaluate their risk for each purchase: if needed, Customers may negotiate higher limitations of liability.

**N. Appendix A, Section 10, Vendor Responsibilities, N. Required Insurance Coverage** is hereby restated in its entirety 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 named as Additional Insureds on all required coverage which provides for such designation. 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. Before placing a specific order, 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. Appendix A, Section 10, Vendor Responsibilities, T. Deceptive Trade Practices; Unfair Business Practices** is hereby restated in its entirety as follows:

1) Vendor represents and warrants that during the preceding five (5) years, 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 during the preceding five (5) years, 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.

**P. Appendix A, Section 11, Contract Enforcement, B. Termination, 3) Termination for Convenience** is hereby restated in its entirety as follows:

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer by giving the Vendor thirty (30) calendar days written notice.

**(Remainder of Page Intentionally Left Blank)**

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

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

**Authorized By:** Signature on File

**Name:** Eric Rice

**Title:** IBM Public Sector Contracts Manager

**Date:** 5/9/2018

**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:** 5/10/2018

**Office of General Counsel:** DB 5/10/2018