

AN ORDINANCE 2009-04-30-0338

AUTHORIZING THE ACCEPTANCE OF A CONTRACT WITH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES (DIR) FOR SERVICES FROM ADJACENT TECHNOLOGIES, TO PROVIDE THE INFORMATION TECHNOLOGY SERVICES DEPARTMENT WITH ENTERPRISE CONTENT MANAGEMENT FOR FILENET PROFESSIONAL SERVICES, FOR A TOTAL COST OF \$1,000,000.00.

* * * * *

WHEREAS, the City's ITSD purchased the IBM FileNet platform in December of 2008 for use as a new Enterprise Content Management System; and

WHEREAS, ITSD requires professional services for FileNet so that ITSD staff may gain experience and mentoring, as well as utilization of best practices in the use of FileNet; and

WHEREAS, these items are available from Adjacent Technologies, utilizing the State of Texas Department of Information Resources (DIR) Contract DIR-SDD-884; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The offer of Adjacent Technologies, under the State of Texas Department of Information Resources contract DIR-SDD-884, in the amount of \$1,000,000.00, to provide the City of San Antonio ITSD with FileNet professional services, is hereby approved. A copy of the Texas Department of Information Resources Contract with Adjacent Technologies is attached hereto and incorporated herein as **Attachment 1**.

SECTION 2. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00010, Segregation of Duties Software Improvements, shall be revised by decreasing SAP WBS Element 09-00010-03-01 entitled Temporary Labor Services, SAP GL account 5201040, by the amount of \$191,675.57.

SECTION 3. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00010, Segregation of Duties Software Improvements, shall be revised by decreasing SAP WBS Element 09-00010-04-01 entitled Software, SAP GL account 5304075, by the amount of \$79,277.50.

SECTION 4. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00010, Segregation of Duties Software Improvements, shall be

revised by decreasing SAP WBS Element 09-00010-04-03 entitled Training, SAP GL account 5201025, by the amount of \$11,479.92.

SECTION 5. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00010, Segregation of Duties Software Improvements, shall be revised by decreasing SAP WBS Element 09-00010-90-01 entitled Transfer From TN-20072-01-01-13, SAP GL account 6101100, by the amount of \$282,432.99.

SECTION 6. The amount of \$282,432.99 is reverted in SAP Fund 43904022, 2007A Tax Note ITSD: Improvements, SAP WBS TN-20072-01-01-13, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 09-00010-90-01. The amount of \$282,432.99 is authorized to be transferred from SAP Fund 43099000, Certificates of Obligation Capital Projects.

SECTION 7. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00011, Information Technology Infrastructure Equipment, shall be revised by decreasing SAP WBS Element 09-00011-01-01 entitled Consulting Services, SAP GL account 5201040, by the amount of \$188,188.14.

SECTION 8. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00011, Information Technology Infrastructure Equipment, shall be revised by decreasing SAP WBS Element 09-00011-03-01 entitled Temporary Labor Services, SAP GL account 5201040, by the amount of \$35,650.00.

SECTION 9. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00011, Information Technology Infrastructure Equipment, shall be revised by decreasing SAP WBS Element 09-00011-04-01 entitled Software, SAP GL account 5304075, by the amount of \$189,927.40.

SECTION 10. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00011, Information Technology Infrastructure Equipment, shall be revised by decreasing SAP WBS Element 09-00011-04-03 entitled Training, SAP GL account 5201025, by the amount of \$12,707.88.

SECTION 11. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00011, Information Technology Infrastructure Equipment, shall be revised by decreasing SAP WBS Element 09-00011-90-01 entitled Transfer From TN-20072-01-01-09, SAP GL account 6101100, by the amount of \$426,473.42.

SECTION 12. The amount of \$426,473.42 is reverted in SAP Fund 43904022, 2007A Tax Note ITSD: Improvements, SAP WBS TN-20072-01-01-09, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 09-00011-90-01. The amount of \$426,473.42 is authorized to be transferred from SAP Fund 43099000, Certificates of Obligation Capital Projects.

SECTION 13. The amount of \$708,906.41 is appropriated in SAP Fund 43904022, 2007A Tax Note ITSD: Improvements, SAP WBS TN-20072-01-01-06, SAP GL account 6102100 –

Interfund Transfer out entitled Transfer to 09-00013-90-01. The amount of \$708,906.41 is authorized to be transferred to SAP Fund 43099000, Certificates of Obligation Capital Projects.

SECTION 14. The budget in fund 43099000, Certificate of Obligation Capital Projects, SAP Project Definition 09-00013, Enterprise Content Management (ECM), shall be revised by increasing SAP WBS Element 09-00013-90-01 entitled Transfer from TN-20072-01-01-06, SAP GL Account 6101100 – Interfund Transfer In, by the amount \$708,906.41.

SECTION 15. The amount of \$708,906.41 is appropriated in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00013, Enterprise Content Management (ECM), SAP WBS Element 09-00013-01-01, entitled Consulting Services, SAP GL Account 5201040.

SECTION 16. A contract has been awarded in the amount up to \$1,000,000.00 from SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 09-00013, Enterprise Content Management (ECM), and is authorized to be encumbered and made payable to Texas Department of Information Resources (DIR) for pre-construction and construction phase services.

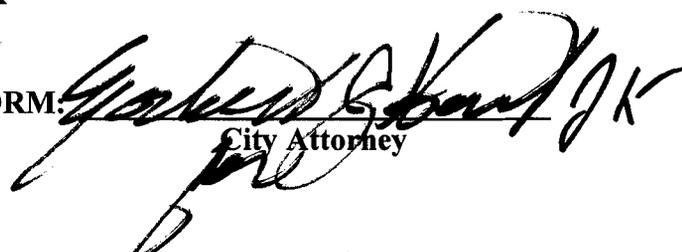
SECTION 17. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 18. This Ordinance shall be effective on the tenth day after passage.

PASSED AND APPROVED this 30th day of April, 2009.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

Agenda Item:	34 (in consent vote: 11, 12, 13, 14, 19, 20, 22, 23, 25A, 25C, 25D, 25E, 27, 29, 32, 33, 34, 36, 37)						
Date:	04/30/2009						
Time:	02:40:58 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the acceptance of a contract with the Texas Department of Information Resources (DIR) for services from Adjacent Technologies, to provide the Information Technology Services Department with Enterprise Content Management for FileNet professional services, for a total cost of \$1,000,000.00. [Richard Varn, Chief Information Officer; Hugh Miller, Director, Information Technology Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR DELIVERABLES-BASED INFORMATION TECHNOLOGY
SERVICES**

ADJACENT TECHNOLOGIES, INC.

1. Introduction

A. Parties

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Adjacent Technologies, Inc. (hereinafter "Vendor"), with its principal place of business at 8303 North Mopac Expressway, Suite 260-C, Austin, Texas 78759.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-115, on February 12, 2008, for Deliverables-Based Information Technology Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-115 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Deliverables-Based Information Technology Services Contract Terms and Conditions; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Sample Statement of Work; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-115, including all addenda; Exhibit 2, RFO DIR-SDD-TMP-115, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms.

3. Service Offerings

Services available under this Contract are limited to the deliverables-based information technology services Technology Categories as specified below.

Technology Upgrade/Migration and Transformation

1) Definition: Technology Upgrade/Migration may be required to increase business functionality, reengineer a business function, keep current with vendor upgrades or when upgrading existing technology. Technology Transformation may be accomplished by converting/migrating legacy applications to new technology either with or without new business functionality or it may include introducing new technology into the enterprise. Technology Upgrade/Migration may also include providing website content accessibility compliance.

2) Examples of included services: assessments of the current application portfolio, evaluation of the technology assets before beginning technology transformation and Business Case development for justification of an initiative. Also included are: technology transformations, which may include, appropriate Return on Investment (ROI), benchmarks and milestones. The following activities may also be included: planning, analysis, requirements development, proof of concept, deployment, implementation, integration, remediation, data migration, documentation, application programming and support services; and training support.

4. Statement of Work (SOW) / Purchase Order Issuance

A. In order to be awarded a Purchase Order hereunder, Vendor must respond, in writing, to a Statement of Work (SOW) for services as issued by Customers, consistent with the Terms and Conditions of this Contract. Vendor shall only respond to SOWs for Technology Categories which Vendor has been awarded in this Contract. Customer SOWs must be complete, signed by an authorized representative of Customer and must be in the form contained in Appendix C. Vendor understands that no work under any SOW issued by Customer shall commence until receipt of Purchase Order.

B. Service provided under this Contract shall be based on the Statement of Work form set forth in Appendix C of this Contract. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the SOW terms and conditions do not conflict with or weaken the terms of this Contract. Vendor shall perform its work in compliance with this Contract and the agreed upon Statement of Work with Customer.

C. The value of any one SOW may not exceed \$10 million including all extensions, renewals and change orders.

5. Pricing

A. Customer Price

Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer's Statement of Work.

B. DIR Administrative Fee

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

C. Tax-Exempt

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

D. Travel Expense Reimbursement

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

6. 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.

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

7. Notification

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

If sent to the State:

Sherri Parks, Director
Contracting & Procurement Services
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

Vendor Contract No. _____

If sent to the Vendor:

Dave Parks
Vice President
Adjacent Technologies, Inc.
8303 N. Mopac Expressway, Suite 260-C
Austin, Texas 78759
Phone: (512) 388-1338
Facsimile: (512) 388-0836
Email: dparks@adjacent-tech.com

8. Customer Satisfaction Metrics

DIR reserves the right to engage a third party to build and gauge customer satisfaction metrics. Should a Vendor go two straight quarters with a low customer satisfaction score, DIR reserves the right to suspend all new prospective business orders for a period of time determined by DIR and until customer satisfaction issues are resolved.

9. 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 not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

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

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours and upon reasonable prior

Vendor Contract No. _____

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 pertains to the Work Product.

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

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

J. Agreement with Subcontractors.

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,

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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.

10. Authorized Exceptions to Appendix A, Deliverables-Based Information Technology Service Standard Terms and Conditions.

No exceptions.

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

Adjacent Technologies, Inc.

Authorized By: ___ signature on file _____

Name: ___ David Parks _____

Title: ___ VP _____

Date: ___ 01-20-2009 _____

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

Authorized By: ___ signature on file _____

Name: Cindy Reed _____

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: ___ 01-23-2009 _____

Legal: ___ 01-22-2009 _____

Appendix A
Department of Information Resources
Deliverables-Based IT Services (DBITS) Contract
Terms and Conditions

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Department of Information Resources
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Terms and Conditions

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Department of Information Resources
Deliverables-Based IT Services (DBITS) Contract
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Appendix A
Department of Information Resources
Deliverables-Based IT Services (DBITS) Contract
Terms and Conditions

1. No Quantity Guarantees

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

2. Definitions

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

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

B. Contract – the document executed between DIR and Vendor into which this Appendix A is incorporated.

C. CPA – refers to the Texas Comptroller of Public Accounts

D. Day - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

E. DBITS Contract – The Deliverables-Based IT Services Contract document executed

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between DIR and the Vendor

- F. 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).
- G. State** – refers to the State of Texas.
- H. Statement of Work Solicitation (SOW)** – A document hereinafter referred to as a SOW Solicitation, outlining the description of services to be performed for a specified DIR Customer. SOW Solicitations may include: background, description of deliverables, acceptance criteria for deliverables, service levels for deliverables, duration of engagement with the DIR Customer, additional Customer terms and conditions and other relevant information.
- I. Technology Category** – A DBITS service grouping for which Vendors may be awarded a Contract.

3. General Provisions

A. Entire Agreement

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

B. Modification of Contract Terms and/or Amendments

1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.

2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken 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.

C. Invalid Term or Condition

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

2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in

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any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

D. Assignment

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

E. Survival

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

F. Choice of Law

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

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

4. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

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

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B. Internet Access to Contract and Pricing Information

1) Vendor Website

Within thirty (30) days from the effective date of the Contract, Vendor will establish and maintain a website specific to the service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the Technology Categories awarded, service descriptions, contact information for Vendor and instructions for placing Purchase Orders that conforms to the requirement of Section 4 of Contract No. DIR-SDD-884. The Vendor's website shall list the DIR Contract number, reference the DIR Go DIRect program, display the DIR logo in accordance with the requirements in paragraph D of this Section, and contain a link to the DIR website for the Contract.

2) Accurate and Timely Contract Information

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

3) Website Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR.

4) Website Changes

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

5) Use of Access Data Prohibited

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

6) Responsibility for Content

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

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C. Services Warranty and Return Policies

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

D. DIR Logo

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

E. Vendor Logo

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

F. Trade Show Participation

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

G. Performance Review Meetings

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

H. DIR Cost Avoidance

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

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Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services.

5. Purchase Orders, Invoices, and Payments

A. Purchase Orders

All Customer Purchase Orders will be placed directly with the Vendor after negotiation and agreement on a Statement of Work, as more particularly described in Section 4.B. of Contract No. DIR-SDD-884. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor.

B. Invoices

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

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 services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

C. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. Payment under the Contract shall not foreclose the right to recover wrongful payments.

6. Contract Administration

A. Contract Administrators

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

1) State Contract Administrator

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of pricing and monthly reports submitted by Vendor.

2) Vendor Contract Administrator

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between Vendor and a Customer, and iii) advising DIR of Vendor's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator

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if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

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

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

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect E-Mail Box at GoDirect.Sales@dir.state.tx.us. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

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

4) DIR Administrative Fee

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The administrative fee shall be three quarters of one percent (.75%). Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or

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

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

C. Records and Audit

1) Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, 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 shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to DIR staff and designees as needed. Vendor shall provide adequate office

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space to DIR staff during the performance of Compliance Check.

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

D. Contract Administration Notification

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

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

7. Vendor Responsibilities

A. Indemnification

1) INDEPENDENT CONTRACTOR

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

2) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

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3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

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

4) PROPERTY DAMAGE

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

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND

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ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

C. Vendor Certifications

Vendor certifies that it: (i) has not given, offered to give, and does 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) is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) has not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate, (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract, (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System*

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(EPLS) maintained by the General Services Administration, and (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 agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (x) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xi) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and (xii) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

D. Ability to Conduct Business in Texas

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

E. Equal Opportunity Compliance

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

F. Use of Subcontractors

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

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G. Responsibility for Actions

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.

H. Confidentiality

1) Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR 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. Background and/or Criminal History Investigation

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

J. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

K. 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 7.K.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be

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contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from Subsection 7.L.

L. Overcharges

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

M. Prohibited Conduct

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

N. Use of State Property

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

O. Immigration

Vendor shall comply with the requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Contract.

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8. Substitution of Workers

- A. If Customer determines a Worker has not followed applicable safety standards or for any other reason is deemed unacceptable, Customer will direct Vendor to resolve the complaint or remove its Worker immediately. If Vendor is unable to resolve the complaint immediately or provide a satisfactory substitute Worker within seven (7) business days, the Purchase Order may be terminated and Customer may select another Vendor to finish the remaining work.
- B. If a Vendor must substitute a worker due to resignation, termination or other such event, Vendor shall have up to seven (7) business days to replace the Worker with a substitute satisfactory to DIR and its Customer. Vendor shall use its best efforts to provide a substitute Worker at the same, or a higher level of experience and skill than those of the replaced Worker. If the Vendor is unable to provide a satisfactory substitute Worker within seven (7) business days, the appropriate Purchase Order may be terminated and the Customer may select another Vendor to finish the remaining work.
- C. Vendor is responsible to retrieve from all Workers as they transition from work on a SOW, whether voluntarily or involuntarily, all keys, access cards, files, equipment and all other property and security devices that may have been issued to Worker by DIR's Customer and to deliver the items to the Customer.

9. Security of Premises, Equipment, Data and Personnel

- A. Vendor, and all of its representatives, shall at all times comply with the posted security measures and policies adopted by the Customer.
- B. Vendor may, from time to time during the performance of this Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to DIR's Customer. Vendor shall use its best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of DIR's Customer, in accordance with the instruction of DIR's Customer. Vendor has the duty to ensure that all such equipment, property and Data are used only for official Customer business. Vendor shall cooperate and ensure its Workers cooperate to execute non-disclosure agreements as may be required by Customers.
- C. The Vendor shall be solely responsible and liable for the safety, injury, and health of its Workers during the performance of this Contract. The Vendor shall establish a safety and health program that it manages for workplace safety and health to reduce injuries, illnesses and fatalities by systematically achieving compliance with OSHA standards and its General Duty Clause. The program must be appropriate to conditions in the workplace, such as the hazards to which employees are exposed and the number of employees present. Vendor is solely responsible for training its employees and monitoring its employees' compliance with the program. Nothing herein shall be construed to create a duty in the Customer or DIR to monitor, inspect

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or report on the safety practices of any Worker, or their compliance with Vendor's safety program.

- D. The Vendor shall be responsible for damage to DIR Customer's equipment, workplace, and its contents when such damage is caused by its Workers, or by equipment provided by the Vendor, if any.

10. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

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Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

11. Alcohol and Drug Free Workplace

Possession, use, or being under the influence of alcohol or controlled substances by Vendor Workers while in the performance of this Contract is prohibited.

12. No Solicitation of State Employees

- A. Vendor shall not solicit, directly or indirectly, any employee of DIR who is associated with this Contract for a period of 90 calendar days following completion of the Contract. Further, Vendor shall not solicit for a period of 90 days following completion of the SOW, directly or indirectly, any employee of a DIR Customer who has participated in any projects on which the Vendor's Workers have been assigned.
- B. DIR and its Customer agree not to solicit employees of the Vendor, during the term of the appropriate Work Order and for a period of 90 calendar days thereafter.

13. State Ownership of Work Product

Vendor and Customer acknowledge and agree that any and all analyses, evaluations, reports, memoranda, letters, ideas, processes, methods, programs, and manuals that were developed, prepared, conceived, made or suggested by the Vendor for any DIR Customer pursuant to a SOW, including all such developments as are originated or conceived during the term of this Contract but are completed or reduced to writing thereafter (the "Work Product") will be and remain the exclusive property of DIR's Customer. For those DIR Customers without statutory authority to own such work product, DIR shall do so on their behalf. All rights, title and ownership interests, including copyright, which Vendor and all Workers may have in any Work Product or any tangible media embodying such Work Product are hereby assigned to DIR's Customer or, in those cases where the Customer does not have the authority, to DIR. Vendor, for itself and on behalf of its Workers, waives any property interest in such work product.

14. Warranty

Unless otherwise agreed to in a Statement of Work related to deliverables acceptance, the Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor has made errors in completed deliverable. Customer will immediately inform the Vendor of the Customer's determination. The Vendor shall

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make such corrections and revisions as are necessary so that the deliverables complained of are acceptable to Customer and shall be corrected without cost to Customer. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original deliverable.

15. Contract Enforcement

A. Enforcement of Contract and Dispute Resolution

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

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

16. Termination

1) Termination for Non-Appropriation

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated by the governing body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the services, they are obligated to pay for those services.

2) Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 18.A, Notices, of intent to terminate.

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3) Termination for Convenience

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

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract. 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 services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Vendor may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued with respect to all services ordered and accepted prior to the effective termination date.

6) Vendor Rights Under Termination

In the event a Purchase Order is terminated or the Contract expires or is terminated for any reason, a Customer shall pay all amounts due for services ordered prior to the effective termination date and ultimately accepted.

17. Force Majeure

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a

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Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

18. Notification

A. Notices

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

19. Handling of Written Complaints

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

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

20. Captions

The captions contained in the Contract and its Appendices 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 Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to 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 State of Texas Disparity Study. The HUB goals defined in 1 TAC §111.13 are: **11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.**

-- Agency Special Instructions/Additional Requirements --

SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: Adjacent Technologies, Inc. State of Texas VID #: 1-75-2966956-0
 Point of Contact: Rich Downing Phone #: 512-338-1338
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Solicitation #: DIR-SDD-TMP-115

SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 1 TAC §111.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- Yes, I will be subcontracting portion(s) of the contract.
(If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.
(If No, complete SECTION 9 and 10.)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
(#1)	(#11) -
(#2)	(#12) -
(#3)	(#13) -
(#4)	(#14) -
(#5)	(#15) -
(#6)	(#16) -
(#7)	(#17) -
(#8)	(#18) -
(#9) -	(#19) -
(#10) -	(#20) -

*If you have more than twenty subcontracting opportunities, a continuation page is available at http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont1.doc.

Enter your company's name here: Adjacent Technologies

Solicitation #: DIR-SDD-TMP-115

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc.

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # _____ Description: _____

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than **five (5) working days** from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than **five (5) working days** prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
_____	_____	____%	____\$	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*
_____	_____	____%	____\$	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*

***If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:**

SECTION 9 - SELF PERFORMANCE JUSTIFICATION

(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

- **Yes** If Yes, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.
- **No** If No, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

Adjacent Technologies intends to fulfill the entire contract, without subcontracting any portion of work. We currently have personnel that are certified and qualified, which will allow us to procure and provide all related services defined within the original solicitation. If Adjacent determines that the entire scope of work may not be met without subcontracting, Adjacent will contact DIR immediately, and follow guidelines to update the HSP accordingly.

SECTION 10 - 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 are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (The PAR is available at <http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/progressassessmentrptf>).
- The respondent must seek approval from the contracting agency prior to making any modifications to their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- 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 to be performed and must provide documents regarding staff and other resources.

signature on file
Signature

David Parks
Printed Name

VP
Title

04-11-2008
Date

APPENDIX C
STATEMENT OF WORK (SOW)
FOR
DELIVERABLES-BASED INFORMATION
TECHNOLOGY SERVICES

Project Name
Technology Category

DIR Customer Name

DATE

Appendix C
Statement of Work (SOW)
for Deliverables-Based Information Technology Services (DBITS) Contract
Project Name
Technology Category
Customer Name

1. Introduction

Describe the deliverables-based services to be delivered and the characteristics of the deliverables at a summary level. The statement of work (SOW) is unique and distinct for each project.

2. Background

Explain why the Customer is contracting for this deliverables-based service. Provide useful information regarding the Customer organization, project history, future plans or any other relevant information regarding the work to be performed.

3. Scope

Sample Content

3.1 Project-Based Services

- Scope of work
- Project risks, assumptions and constraints
- Roles and responsibilities
- Detailed description of deliverables
- Acceptance criteria
- Project completion criteria
- Project schedules to be achieved by vendor
- Relevant quality processes that will apply, such as change management, acceptance, and risk and issue management

3.2 Outsourced Services

- Scope of services to be delivered
- Acceptance criteria
- Service-level objectives
- Key performance indicators
- Service-level agreements (SLAs)
- Service-level management

4. Deliverables

4.1 Sample Content

Appendix C
Statement of Work (SOW)
for Deliverables-Based Information Technology Services (DBITS) Contract
Project Name
Technology Category
Customer Name

(Example – at a minimum, Customers should consider the following items when developing their SOW)

- Deliverables must be provided on the dates specified. Any changes to the delivery date must have prior approval (in writing) by the Customer contract manager or designate.
- All deliverables must be submitted in a format approved by the Customer contract manager.
- All deliverables must have acceptance criteria established and a time period for testing or acceptance.
- If the deliverable cannot be provided within the scheduled time frame, the Vendor is required to contact the Customer contract manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
- A request for a revised schedule must be reviewed and approved by the Customer contract manager before placed in effect. Contract Terms and Conditions may dictate penalties, costs, and other actions based on the facts related to the request for a revised schedule.
- The Customer will complete a review of each submitted deliverable within specified working days for the date of receipt.
- A kickoff meeting will be held at a location and time selected by the Customer where the Vendor and its staff will be introduced to the Customer.

4.2 Sample Delivery Schedule

No.	Item	SOW Paragraph	Due Date	Recipient
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				

5. Reports and Meetings

Sample Content (Example – at a minimum, Customers should consider the following items when developing their SOW)

- The Vendor is required to provide the Customer contract manager with weekly written progress reports of this project. These are due to the Customer contract manager by the close of business on the *specify day* each week throughout the life of the project

Appendix C
Statement of Work (SOW)
for Deliverables-Based Information Technology Services (DBITS) Contract
Project Name
Technology Category
Customer Name

- The progress reports shall cover all work performed and completed during the week for which the progress report is provided and shall present the work to be performed during the subsequent week.
- The progress report shall identify any problems encountered or still outstanding with an explanation of the cause and resolution of the problem or how the problem will be resolved.
- The Vendor will be responsible for conducting weekly status meetings with the Customer contract manager. The meetings will be held on *specify day* of each week - at a time and place so designated by the Customer contract manager - unless revised by the Customer contract manager. The meetings can be in person or over the phone at the discretion of the Customer contract manager.

6. Service Level Agreement

The items listed below are suggestions for areas to be considered for service levels and incorporated into the SOW service level agreement.

- Achievement of Budget Goals (total and subtotals)
- Achievement of Schedule Goals (final and interim)
- Security (as defined by customer)
- Quality (as defined by customer)
- Availability (data, system, and components)
- Performance (transmission, response, or completion times)
- Meantime to Resolution (MTR)
- Business Continuity
- ISO/ANSI standards
- IEEE standards
- Required communications (meetings, reports, calls, emails)
- Required documents (plans, estimates, schedules, analyses)
- Degree of accuracy of estimates (schedule, budget, resources, total)
- Effective risk management and response (adherence to plans)
- Effective scope management and change control (adherence to plans)
- Data quality (fitness for use, accuracy, precision, completeness)
- Ad hoc query response (usually written in terms of averages)
- Reliability (queries generate same valid results)
- Consistency (calculations and definitions are consistent regardless of source or function)
- Acceptable usage (query controls)
- Correct mapping of old to new (no functions or data lost that were not planned to retire)
- Previous software, system, or service retired on time

7. Period of Performance

Specify the period of performance in which the Vendor will conduct and complete the work associated with the SOW.

Appendix C
Statement of Work (SOW)
for Deliverables-Based Information Technology Services (DBITS) Contract
Project Name
Technology Category
Customer Name

8. Invoices

Describe the Vendor's responsibilities for invoicing Customer including invoice content, frequency/schedule and instructions for submitting invoices. Payments will be made in accordance with Appendix A of the DIR-SDD-TMP-115 Contract.

9. Customer/Vendor-Furnished Equipment and Work Space

Specify what equipment and/or work space the Customer will provide or the expectations of what the Vendor will provide.

10. Additional Customer Terms and Conditions

List any additional terms and conditions required by the Customer. Customers may negotiate the terms and conditions of a SOW to suit their business needs so long as the SOW terms and conditions do not conflict or weaken the DIR master contract.

11. Vendor Response

Sample Content (Example – at a minimum, Customers should consider the following items when developing their SOW)

- All written deliverables must be phrased in terms and language that can be easily understood by non-technical personnel (e.g., laypersons without subject matter expertise)
- All document deliverables must be in formats (hard copy and electronic) as specified by the Customer - at a minimum, the formats must be in industry accepted standards (e.g., MS Word, MS PowerPoint, MS Project)
- The Vendor must demonstrate its knowledge and expertise of the environment (e.g., platforms, software, applications, network, tools, etc.) for which work is to be performed
- All items of this agreement shall be done in accordance with the Service Level Agreement.

Sample Content

- Agreement to confidentiality and legal statements
- Vendor staff capabilities specific to this SOW:
 - Organization chart
 - Management team resumes
 - Key personnel resumes
- Vendor's services capabilities:
 - Outline of capability to deliver the required services, including process, functional and technical expertise
 - Agreed-on SOW for deliverables-based services

Appendix C
Statement of Work (SOW)
for Deliverables-Based Information Technology Services (DBITS) Contract
Project Name
Technology Category
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- Project plans for project services or transition
- Project management plan addressing the tasks specified in the SOW

12. Pricing

The main purpose of this section is to detail the pricing for the deliverables-based services. Vendors should also provide a summary of any assumptions and exclusions.

Sample Pricing Sheet

Deliverable No.	Deliverable Name	Price

DIR strongly suggests that Vendors be required to provide hourly rates as a point of reference for the Customer when evaluating the pricing submitted for the SOW.

Sample Pricing Sheet for Hourly Rates

Name	Hourly Rate	Number of Hours

13. Response Submission Requirements

Sample Content

- SOW schedule of events: deadline for questions, deadline for answering questions, response due date
- Address for response submission
- Number of copies
- Mandatory response contents