

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR PRODUCTS

Microsoft Corporation

1. Introduction

A. Parties

This Contract for products 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 Microsoft Corporation (hereinafter "Vendor"), with its principal place of business at One Microsoft Way, SAMM D/4450 Redmond, Washington 98052.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-424, on 3/15/2019, for Education Information Technology (I.T.) Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-424 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-424, including all addenda; and Exhibit 2, DIR-TSO-TMP-424, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2.

2. Term of Contract

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with one (1) optional two-year renewal and one (1) optional one-year renewal. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product Offerings

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A. Products

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

B. Emerging Technologies and Future Acquisitions

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

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000.00 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

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

If sent to the State:

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

If sent to the Vendor:

Ryan Asdourian
Microsoft Corporation
One Microsoft Way, SAMM D/4450
Redmond, Washington 98052
Phone: (425) 704-2986
Email: rasdo@microsoft.com

7. Software License, Service and Leasing Agreements

A. Shrink/Click-wrap License Agreement

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

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

A. Appendix A, Section 3, Definitions, Subsection G, Reseller is hereby deleted and replaced in its entirety as follows:

Reseller - any third party approved by Vendor to sell to eligible Customers under this Contract. Vendor will follow this Contract's terms and conditions to its Resellers under his Contract, including those relating to pricing. In the event that any Reseller of Vendor fails to abide by the terms and conditions of the Contract, DIR will have the right to disqualify such entity as a Reseller and restrict it from making sales under the Contract effective upon written notice to Vendor.

B. Appendix A, Section 4, General Provisions, Subsection I, Data Location is hereby deleted and replaced in its entirety as follows:

Texas DIR and Vendor will each comply with all applicable laws and regulations (including applicable security breach notification law). This contract does not contemplate or support and Vendor does not agree to store or become custodian of any Texas DIR or Customer data in connection with its activities under the Contract, provided that Vendor may process Customer or Texas DIR information solely for the purpose of facilitating Customer transactions under the Contract. It shall be the responsibility of Customer or Texas DIR (as applicable) to remove and backup personal data from devices in connection with the return or exchange of a device purchased under the Contract. In the event that Customer or Vendor fails to remove personal data in connection with a return or exchange, Vendor will do so in accordance with any

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applicable warranty for the device and Vendor's then-current return policies, available here: <https://support.microsoft.com/en-us/help/4023529/surface-how-to-prepare-for-service>. If Vendor changes its applicable return or exchange policies, it will provide Texas DIR and Customer with comparable terms that are at least as favorable as those it makes generally available to buyers of the devices purchased by the applicable Customer under the Contract. CUSTOMERS SHOULD REVIEW THE THEN CURRENT WARRANTY AND RETURN POLICIES BEFORE SENDING DEVICES FOR SERVICE.

C. Appendix A, Section 4, General Provisions, Subsection B, Modification of Contract Terms and/or Amendments is hereby deleted and replaced in its entirety as follows:

DIR may amend the contract upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority.

D. Appendix A, Section 4 General Provisions, Subsection D Assignment, Subsubsection 2) is hereby deleted and replaced in its entirety as follows:

Vendor may assign the Contract to a subsidiary, parent company, or affiliate, provided that such assignment shall not relieve Vendor of its obligations under the Contract. Assignment of the Contract by vendor under the above terms shall require written notification by Vendor to DIR of such assignment.

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

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

F. Appendix A, Section 9, Contract Administration, Subsection B, Reporting and Administrative Fees, Subsubsection 4, DIR Administrative Fee is hereby amended as follows:

d) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

e) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

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G. Appendix A, Section 9, Contract Administration, Subsection B, Reporting and Administrative Fees, Subsection 5(b), Accurate and Timely Submission of Reports is hereby deleted in its entirety and replaced with the following:

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. Vendor and DIR will mutually select and agree on the auditor. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

H. Appendix A, Section 9, Records and Audit, Subsections C(3) and C(4) are deleted in their entireties.

I. Appendix A, Section 10, Vendor Responsibilities, Subsection A, Indemnification, Subsection 4), PROPERTY DAMAGE is hereby deleted in its entirety and replaced with the following:

TO THE EXTENT ANY LOSS, DAMAGE, OR DESTRUCTION OF ANY TANGIBLE PROPERTY OF CUSTOMER OR THE STATE IS CAUSED BY THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS "PROPERTY DAMAGE CLAIMS", THE VENDOR SHALL PAY COMMERCIALY REASONABLE THIRD PARTY COSTS OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. (IN ADDITION TO COSTS OF PRIVATE CONTRACTORS OR SUPPLIERS, REPAIR OR REPLACEMENT COSTS OF A GOVERNMENTAL ENTITY EMPLOYED TO PERFORM SUCH SHALL MEET THE DEFINITION OF "THIRD PARTY COSTS.") SUCH COSTS SHALL BE ACCURATELY DOCUMENTED 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 AND REQUIRED DOCUMENTATION FOR THE AMOUNT DUE. THE FOREGOING SHALL CONSTITUTE CUSTOMER'S, OR STATE'S, AS APPLICABLE, SOLE AND EXCLUSIVE REMEDY FOR SUCH PROPERTY DAMAGE CLAIMS.

J. Appendix A, Section 10, Vendor Responsibilities, Subsections Section C, (ix) and (xvi) Vendor Certification, are hereby deleted in their entireties and replaced with the following:

(ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441. Notwithstanding the foregoing, the parties acknowledge that this Contract does not contemplate custom-made products or goods but rather Vendor will provide all products and goods to be purchased hereunder from its commercially available inventory in the normal course of business;

(xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract. Notwithstanding the foregoing, the parties acknowledge that this Contract does not contemplate custom-made products or goods but rather Vendor will provide all products and goods to be purchased hereunder from its commercially available inventory in the normal course of business; and

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- K. Appendix A, Section 10, Vendor Responsibilities, Subsection K, Background and/or Criminal History Investigation** is hereby deleted in its entirety and replaced with the following:

Customer may, at its sole expense, request that any Vendor employee, undergo a criminal background check ("Customer Owned Check") administered by Customer or Customer's vendor, prior to the employee's entry on Customer's premises, or prior to obtaining badge or systems access provided Customer (i) acknowledges that consent to such background check is entirely voluntary on the part of Vendor's employee(s), and (ii) agrees to obtain the consent of such employee prior to performing a Customer Owned Check. Should a Vendor employee, choose not to consent to such a Customer Owned Check, Customer may, at its option, refuse or withdraw that employee's permission to enter Customer's premises or to access Customer's systems. Customer Owned Checks that Customer or its subcontractors or agents perform will be job-related only and conducted in accordance with the Fair Credit Reporting Act another applicable laws and regulations. DIR and Customer agrees (x) to use the results of any such Customer Owned Check only in connection with Customer's decision whether to permit the Vendor employee to enter or remain on Customer property, or to access Customer's systems; (y) to not disclose the result of such Customer Owned Check to Vendor or any third party, except as required by law; and (z) to not share the contents or provide Vendor or any third party with any copy of the consumer report generated by the Customer Owned Check of any Vendor employee(s), except as required by law. If, as a result of a Customer Owned Check, Customer refuses or withdraws Vendor's employee(s)' permission to enter or remain on Customer property, or to access Customer's systems, Vendor shall promptly replace such employee on the Customer project in question.

- L. Appendix A, Section 10, Vendor Responsibilities, Subsection O, Required Insurance Coverage** is hereby deleted in its entirety and replaced with the following:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. Vendor may, at its option, meet the contractual insurance requirements set forth herein via commercial insurance, self-insurance, alternative risk financing techniques, or a combination of these options. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require

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additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage; and
- c) 30-day Notice of Termination in favor of DIR and/or Customer.
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

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

3) Business Automobile Liability Insurance

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

- a) Waiver of Subrogation and;
- b) 30-day Notice of Termination

M. Appendix A, Section 10, Vendor Responsibilities, Subsection Q, Immigration is deleted in its entirety and replaced with the following:

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

N. Appendix A, Section 12, Notices, Subsection A is hereby amended as follows:

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

DIR Contract No. DIR-CPO-4471

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If sent to the State:

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

If sent to the Vendor:

Ryan Asdourian
Microsoft Corporation
One Microsoft Way
Redmond, Washington
Phone: (425) 704-2986
Email: rasdo@microsoft.com

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

Microsoft Corporation

Authorized By: Signature On File

Name: Ryan Asdourian

Title: Surface BG Lead

Date: 3/6/2020 | 2:42 PM PST

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

Authorized By: Signature On File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 3/9/2020 | 12:19 PM

Office of General Counsel DB 3/9/2020 | 11:41 AM CDT