

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

CIBER, 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 CIBER, Inc. (hereinafter “Vendor”), with its principal place of business at 5251 DTC Parkway, Suite 1400, Greenwood Village, Colorado, 80111.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a posting on the Texas Building and Procurement Commission’s Electronic State Business Daily, posting number DIR-SDD-TMP-067, on July 11, 2005, for FileNet Technical Services.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; and Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; 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, and finally Appendix B.

2. Service Offerings

Services available under this Contract are limited to Technical Services for FileNet Corporation Software applications only as provided through Labor Categories listed in Section 3, Customer Rates, below. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

This Contract does not include professional or consulting services as defined in Chapter 2254, Texas Government Code. This Contract does not include training services.

3. Customer Rates

The Customer Rates to be charged to the Customer are set forth as follows:

Labor Category	DIR Customer Rate
Project Manager	\$150.00

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Solutions Architect	\$125.00
Lead Developer	\$125.00
Technical Writer	\$75.00
Quality Assurance Specialist	\$100.00
Content Administrator	\$100.00
ECM Infrastructure Specialist	\$125.00
Senior ECM	\$125.00
Programmer/Analyst	\$125.00
Administrative Support	\$100.00

All rates specified above include the DIR Administrative Fee specified in Section 4.

4. DIR Administrative Fee

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 two percent (2 %). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$ 2,000 dollars.

5. 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, Service Delivery Division
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

If sent to the Vendor:

Law Department
CIBER, Inc.
5251 DTC Parkway, Suite 1400
Greenwood Village, Colorado 80111
Phone: (303) 267-3866
Facsimile: (303) 224-4125

6. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.

A. Appendix A, Section 3, Definitions, A. Customer is hereby restated in its entirety as: 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, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.

B. Appendix A, Section 4, General Provisions is hereby amended by adding new Subsection G., Purchase Order Acceptance as follows:

No Customer Purchase Order will be binding upon Vendor unless it is accepted in writing by an authorized Vendor representative.

- C. Appendix A, Section 5, Pricing, Subsection A, Customer Price is hereby restated as follows:

The Price to the Customer equals the rates as specified in Section 3 of the Contract, Customer Rates. This Price includes the DIR Administrative Fee specified in Section 4 of the Contract.

- D. Appendix A, Section 5, Pricing, Subsection B, Customer Discount, Subsection 1) is hereby restated as follows:

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

- E. Appendix A, Section 5, Pricing, Subsection B, Customer Discount, Subsection 2) is hereby restated as follows:

If pricing for services available under the Contract is provided at a lower rate to: (i) an eligible Texas Customer who is not purchasing those services under the Contract or (ii) any other entity or consortia authorized by Texas law to sell said services to eligible Texas Customers, then the available rates in the Contract shall be adjusted to that lower rate. A "Texas Customer" shall mean any Customer that is a Texas state agency, unit of Texas local government or Texas institution of higher education. The Contract shall be amended within ten (10) business days to reflect the lower rate.

- F. Appendix A, Section 8, Contract Administration, Subsection C. Records and Audit, Number 1) is hereby restated as follows:

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.

- G. Appendix A, Section 9, Vendor Responsibilities, Subsection A, Indemnification, Subsection 1) Acts or Omissions is hereby restated in its entirety as follows:

Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, for injuries to persons or damage to tangible property to the extent resulting from any negligent acts or omissions of the Vendor or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

- H. The following paragraph is hereby added to Appendix A, Section 9, Vendor Responsibilities, Subsection A, Indemnification, Subsection 2) Infringements, paragraph c) as follows:

If the remedies set forth in (i) or (ii) are not available on commercially reasonable terms, Vendor may terminate the license for the allegedly infringing services, and upon receipt of services, return the fees paid by Customer for such services, prorated over a five year term from the applicable delivery date. For purposes of this indemnity, services do not include any third party products or services, whether or not supplied by Vendor. As to such third party services, Vendor shall exercise commercially reasonable efforts to secure for the Customer the remedies, if any, offered by the third party. This Section 9A2 states Vendor's entire liability and Customer's exclusive remedy for infringement of intellectual property rights.

- I. The following paragraph is hereby added to Appendix A, Section 9, Vendor Responsibilities, Subsection A, Indemnification, as Subsection 3) as follows:

The parties intend that all indemnification under this Contact shall be apportioned on a comparative basis taking into account the relative factors of all persons contributing to such claim or loss. Vendor shall only be liable for that portion of the total indemnified claim or loss that Vendor's acts or omissions bear to the acts and omissions of all persons contributing to such total indemnified claim or loss. Vendor's responsibility to indemnify and hold harmless Customer is conditioned upon Vendor receiving prompt written notice of any claim or action. Timely receipt of notice by Vendor is of the essence. To the extent Vendor's defense of the claim is materially prejudiced by the Customer's failure to provide prompt notice, Vendor shall be relieved of its indemnity obligations. Vendor has no liability to indemnify or hold the Customer harmless for any payment by the Customer in settlement or compromise of a claim or action unless Vendor receives written notice at least ten (10) business days in advance of such settlement or compromise and approves the settlement in writing before payment is made.

- J. The following sentence is added to Appendix A, Section 10, Contract Enforcement, Subsection B, Termination, Subsection 1) Termination for Non-Appropriation as follows:

Vendor understands the Customer will pay for all services delivered by Vendor through the effective date of termination.

- K. Appendix A, Section 10, Contract Enforcement, Subsection C, Force Majeure, is hereby restated in its entirety as follows:

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

- L. The following Section is added to Appendix A as Section 13, Ownership of Information as follows:

Unless Vendor and Customer agree otherwise in writing, the Work Products developed for the Customer by Vendor pursuant to this Contract and any Statement of Work will belong to the Customer. Work Product means all works of authorship fixed in any tangible medium of expression (including, without limitation, computer programs), and all intermediate and partial versions thereof, as well as all source code, object code, documentation, formulae, processes, algorithms, designs, specifications, inventions, discoveries, concepts, improvements, ideas, know-how, techniques, materials, program materials, software, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, apparatus, methods, techniques, other creations, and the like, whether or not patented or patentable or subject to copyright, or otherwise protectable by law, that are created, invented or conceived for the use or benefit of Customers in connection with the Contract. This provision does not apply to third party works Vendor provides to the Customer or to Vendor Materials (as defined below). DIR acknowledges that Vendor is in the business of providing information technology services and has accumulated expertise in this field and agrees that Vendor will retain all right, title and interest in and to all Vendor Materials. "Vendor Materials" means all discoveries, concepts and ideas, whether or not registrable under patent, copyright or similar statutes, including, without limitation, patents, copyright, trademarks, trade secrets, processes, methods, formulae, techniques, tools, solutions, programs, data and documentation, and related modifications, improvements and know-how, that Vendor, alone, or jointly with others, its agents or employees, conceives, makes, develops, acquires or obtains knowledge of at any time before, after or during the term of this Contract without breach of Vendor's duty of confidentiality to DIR or Customer. If Vendor Materials are included with or embodied in any Work Product, the Customer will have a

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perpetual, irrevocable, nonexclusive, worldwide, royalty-free license to use, execute, reproduce, display, perform, distribute internally, and prepare for internal use “derivative works” as defined in the Copyright Act, 17 U.S.C. §101, based upon, the Vendor Materials in each case solely in conjunction with the Work Product delivered hereunder. Any interest in the Services and Work Products granted hereunder by Vendor to the Customer shall be effective upon and to the extent of payment by the Customer of the fees and expenses invoiced by Vendor pursuant to this Contract.

Notwithstanding anything to the contrary in the Contract, Vendor and its personnel are free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of the Contract so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information of the Customer.

Warranty and Disclaimer. Vendor warrants that it will (a) perform all Services in a professional and workmanlike manner and (b) provide Work Products that conform in all material respects to the specifications set forth in the Statement of Work. The Customer must report any deficiencies to Vendor in writing within ninety (90) days from the date of Vendor’s delivery of the Services or Work Products, to receive warranty remedies. The Customer’s exclusive remedy and Vendor’s entire liability is to provide Services to correct the deficiencies. If Vendor is unable to correct the deficiencies, the Customer is entitled to recover the fees paid to Vendor for the deficient portion of the Services or Work Product. **VENDOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.** Vendor makes no warranties regarding any portion of any deliverable developed by the Customer or by any third party, including any third party software, hardware, or other third party products provided by Vendor.

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

CIBER, Inc.

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

Authorized By: *signature on file*

Authorized By: *signature on file*

Name: Jim Hudson

Name: Brian S. Rawson

Title: Vice President

Title: Director of Service Delivery

Date: 1-3-06

Date: 12/29/05

Legal: *signature on file* 12/21/05