STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT

HEWLETT PACKARD

This **VOLUME PRICING CONTRACT** for the acquisition of Hewlett Packard products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Hewlett Packard, with its principal place of business at 20555 SH 249, Houston, Texas 77070.

1. Contract Scope and Term

This Contract sets forth the terms and conditions governing the acquisition of Hewlett Packard products and related services. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be two (2) years commencing on the last date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

2. Definitions

Terms used in this Contract shall have the following meanings:

A. **DIR** - the Department of Information Resources.
B. **Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
C. **Manufacturer** – Hewlett Packard.
D. **Reseller** – distributor, dealer, or value-added reseller designated by the Manufacturer who participates as a primary distribution source for the Manufacturer.
E. **Product** – any information resource technology item manufactured or produced by the Manufacturer and listed within the Product Offering, Appendix B. Product may include any pre-loaded software necessary for operation.
F. **Services** – any value-added service that the Manufacturer and/or Reseller may perform as related to products available under this Contract. For example: warranty, support services, installation, and product training.
G. **State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
H. **Manufacturer Contract Administrator** - the individual as appointed by the Manufacturer to administer this Contract on behalf of the Manufacturer and Resellers.
I. **Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
J. **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).

K. **Information Resources Technology (Technologies)** – as defined in Texas Government Code §2054.003.
L. **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.
M. **State** – refers to the State of Texas.
N. **Annual Period** – the calendar year of September 1st through August 31st, based on the State fiscal year.

3. **Entire Agreement and Order of Precedence**

This Contract; Appendix A, Standard Clauses for Texas DIR Contracts; and Appendix B, Pricing Index and Product Offering, constitute the entire agreement between the parties hereto. 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. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's purchase order and this Contract, the Contract term shall control.

4. **Product and Service Offerings**

Products available under this Contract are set forth as any information technology resources item manufactured and produced by the Manufacturer as listed within Appendix B, Pricing Index and Product Offering. Services include any value-added service that the Manufacturer and/or its Reseller may perform as related to products available under this Contract. Seat Management and Compaq Maintenance Services are excluded from this Contract.

A. **Products**

Manufacturer will maintain a product list including pricing, product descriptions, and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products, and removable of obsolete or discontinued products.

B. **Services**

Examples of service include, but are not limited to: warranty, support services, installation, and product training. Manufacturer will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering.

5. **Contract Administration**

DIR and the Manufacturer will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. DIR Contract Administrator

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

B. Manufacturer Contract Administrator

Manufacturer shall provide a dedicated Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between a Reseller and a Customer, and iii) advising DIR of Resellers performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Manufacturer's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

6. Use of Resellers

Manufacturer shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State of Texas. DIR agrees to permit Manufacturer to utilize designated Resellers so that sufficient resources are available to insure maximum service capability throughout the State. Such participation is subject to the following conditions:

A. Designation of Resellers

Manufacturer shall designate 2 (two) Resellers, at a minimum, to participate under this Contract. At any time, DIR reserves the right to rescind any such Reseller participation or request that Manufacturer name additional Resellers should DIR determine it is in the best interest of the State.

Manufacturer shall have the right to qualify Resellers and their participation as fulfillment agents under this Contract by product line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria, provided that: i) such criteria are uniformly applied to all potential Resellers based upon Manufacturer's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; and ii) all general categories of criteria are fully covered by participating Resellers to meet the needs of Customers.

All Resellers who have been approved by the Manufacturer in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Manufacturer warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means restrict any Reseller's participation or ability to quote a particular order; or prohibit Reseller from participating in other procurement opportunities offered through DIR.

B. Changes in Reseller List

Manufacturer may add and/or delete Resellers throughout the term of the contract provided the total number of Resellers does not exceed fifteen (15), but shall be no less than two (2). However, the participating Resellers must geographically provide adequate coverage to the entire State.

C. Conditions of Reseller Participation
All participating Resellers must be approved Qualified Information Systems Vendors with the State of Texas. At least thirty percent (30%) of the participating Resellers must be Historically Underutilized Businesses as defined by the Texas Building and Procurement Commission.

D. Responsibility for Reseller Performance and Reporting
Manufacturer shall be fully liable for Resellers performance and compliance with all Contract terms and conditions herein. Manufacturer shall be responsible for reporting all products and services purchased through Resellers, in accordance with Section 10, Reporting and Administrative Fees.

E. Available Products and Services
Products and services ordered directly through Resellers shall be limited to products and services previously approved for inclusion under this Contract in Section 4, Product and Services Offerings, and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

F. Reseller Pricing to the Customer
Manufacturer is required to offer the same Customer Discount to all participating Resellers. More advantageous pricing for large volume purchases may be offered, however the pricing for such an opportunity will be the same for all participating Resellers. The participating Resellers are not allowed to add margin to the Customer Discount given by Manufacturer.

7. Pricing
The price to the Customer under this Contract will be established by the Manufacturer and shall be the lowest price offered through Resellers to any governmental entity for the same product or service. Any violation of this provision may result in this Contract being terminated.

A. Customer Discount
Based on a quantity of one (1), the Customer discount from the Resellers for all products and services will be a percentage off Manufacturer's Suggested Retail Price (MSRP) as attached in Appendix B, Pricing Index and Product Offering. Customer may negotiate more advantageous pricing for large volume purchases with a participating Reseller. The Customer Discount set forth herein shall adhere to Section 6 Paragraph F, Reseller Pricing to the Customer.

B. DIR Administrative fee
The DIR administrative fee specified in Section 11, Reporting and Administrative Fees, shall be included in the Customer Discount set forth herein. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees
The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be F.O.B. Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Tax-Exempt
Customers are exempt from all federal and state sales tax.

E. Changes to Pricing

Manufacturer may change the price of any product or service at any time, based upon changes to the Manufacturer's Suggested Retail Price, but discount levels shall remain consistent with the discount levels specified in Appendix B, Pricing Index and Product Offering. Price decreases shall take effect automatically during this Contract term and Manufacturer shall pass all price decreases on to the Customer.

Manufacturer may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable price discount levels as specified in Appendix B, Pricing Index and Product Offering.

8. Order Processing and Payments

All Customer purchase orders will be placed directly with the participating Resellers. Accurate purchase orders shall be effective and binding upon Reseller when placed in the mail or electronically transmitted prior to the termination of this Contract period.

Invoices shall be submitted by Reseller directly to the Customer. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services shall be made to the Reseller by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's purchase order number or other pertinent information for verification of receipt of the order by the Customer.

Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Reseller. Payment under this contract shall not foreclose the right to recover wrongful payments.

9. Service Agreement

Customers purchasing services under this Contract shall abide by the terms and conditions as stated within Manufacturer's then current Service Agreement. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Manufacturer and DIR. The Service Agreement shall include Service Level Descriptions for related products.

Compliance with the Service Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance as it pertains to the Service Agreement. If DIR purchases services for its own use under this Contract, it shall be responsible for its own compliance with the Service Agreement terms and conditions.

10. Internet Access to Contract and Pricing Information

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, upon 60 days from execution of the contract, Manufacturer will be required to host the complete Contract product and service offerings, including pricing, at Manufacturer's Internet site. Internet access to this information will be provided including all subsequent changes to the product and services offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

A. Accurate and Timely Contract Information

Manufacturer warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Manufacturer's web site. Manufacturer shall indemnify DIR, the State, and Customers for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

B. Price Data Retention and Compliance Checks

Periodic Compliance Checks of the information posted for this Contract on Manufacturer's web site will be conducted by DIR. Upon request by DIR, Manufacturer shall provide verifiable documentation that pricing listed upon this site is uniform with the Customer Discount as stated in Appendix B, Pricing Index and Product Offering.

C. Web Site Changes

Manufacturer hereby consents to a link from the DIR web site to Manufacturer's web site 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 Manufacturer with subsequent notice of link termination or removal. Manufacturer 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.

D. Use of Access Data Prohibited

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

E. Responsibility for Content

Manufacturer is solely responsible for administration, content, intellectual property rights, and all materials at Manufacturer's web site. Manufacturer is solely responsible for its actions and those of its agents, employees, Resellers, or subcontractors, and agrees that neither Manufacturer nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Manufacturer to list all participating Reseller's information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as deemed necessary by DIR. DIR also reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent this Contract.

F. On-line Price Configurator

Manufacturer may be required to make available an on-line configurator at its Contract web site. Directions and assistance in using the configurator and web site in general must be available at entry. This configurator must enable Customers to: (i) view the options available for the type of product or service requested, (ii) search and find products or services offered under this Contract, (iii) calculate complete acquisition costs. Information consistent with the terms of this Contract about payment, shipping, returns, delivery terms and special pricing shall be available. Customers shall have the option of printing their "shopping cart" choices.

For those users who are positioned to use it, Manufacturer shall make available an option for on-line secure ordering.

11. **Reporting and Administrative Fees**

Manufacturer shall be responsible for reporting all products and services purchased through Resellers under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Manufacturer submits three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Manufacturer's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Manufacturer.

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 Manufacturer's applicable Contract books.

A. **Detailed Monthly Report**

Manufacturer 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 this Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect coordinator. Reports are due on the fifteenth (15th) day of the close of the previous month period. It is the responsibility of Manufacturer to collect and compile all sales under this Contract from participating Resellers and submit one (1) monthly report. The monthly report shall include the participating individual Reseller's sales for the period, the Reseller's company name, each Customer name, order date, ship date, description, part numbers, manufacturer, quantity, unit price, extended price, Customer purchase order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Manufacturer for correction.

B. **Historically Underutilized Business Subcontract Reports**

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

Reports shall be due quarterly in compliance with the following schedule:
September – November: due by December 5th
December – February: due by March 5th
March – May: due June 5th
June – August: due September 5th

C. **DIR Administrative Fee**

An administrative fee shall be paid by Manufacturer to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. 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 Manufacturer. Any change in the administrative fee shall be incorporated in the price to the Customer.

Manufacturer shall pay DIR, by the fifteenth (15th) day of the end of the previous calendar month, one half of a percent (.50%) administrative fee based on the dollar value of all sales to Customers pursuant to this Contract. The cumulative total administrative fee due under this

Contract shall not be less than $200,000.00 for any Annual Period. Upon total net sales of $50,000,000.00, Manufacturer shall not be required to pay DIR the administrative fee, but shall be required to continue reporting all sales pursuant to this contract.

12. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this 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. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:
Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
Email: patrick.hogan@dir.state.tx.us

If sent to the Manufacturer:
Charles Wooten
Hewlett Packard
2410 Cadara Woods
San Antonio, TX 78259
Phone: (210) 499-0694
Fax: (210) 404-0034
Email: charles.wooten@hp.com

13. Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

14. Choice of Law

The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

Hewlett Packard

Authorized By: _____

Name: RON SMITH

Title: MANAGER, PUBLIC SECTOR CONTRACTS

Date: 10/28/02

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

Authorized By: _____

Name: Patrick W. Hogan

Title: Director of Business Operations

Date: 10/18/02

Legal: 10/18/02

APPENDIX A

STANDARD CLAUSES
STATE OF TEXAS, DIR CONTRACTS

TABLE OF CONTENTS

GENERAL

1. Indemnification Clause
2. Non-Assignment Clause
3. No Quantity Guarantees
4. Confidentiality Clause
5. Manufacturer Certifications
6. Equal Opportunity Compliance
7. Technology Access Clause
8. Commodity Software
9. Records
10. Ability to Conduct Business in Texas
11. Quotation, Warranty, and Return Policies
12. Invalid Term or Condition
13. Enforcement of Contract and Dispute Resolution
14. Entireties
15. Modification of Contract Terms and/or Amendments
16. DIR Logo
17. Manufacturer Logo
18. Leasing Provision
19. Site Preparation
20. Training and Trade Show Participation
21. Orientation Meeting
22. Use of Subcontractors
23. Force Majeure
24. Termination for Non-Appropriation
25. Termination for Convenience
26. Termination for Cause
27. Customer Rights Under Termination
28. Manufacturer or Reseller Rights Under Termination

Appendix A

29. Survival

30. Handling of Written Complaints

STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract. Manufacturer shall be fully liable for Resellers performance and compliance with the clauses herein.

1. INDEMNIFICATION CLAUSE. Manufacturer 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, arising out of, or resulting from any acts or omissions of the Manufacturer or its agents, employees, subcontractors, Resellers, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.
The Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Manufacturer. Manufacturer agrees to defend against any and all such claims at Manufacturer's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Manufacturer. Manufacturer agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

2. NON-ASSIGNMENT CLAUSE. This Contract shall be entered into and be binding upon the successors of the parties. Manufacturer may not assign this Contract without the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

3. NO QUANTITY GUARANTEES. This Contract is not exclusive to the named Manufacturer. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. CONFIDENTIALITY CLAUSE. Manufacturer acknowledges that DIR is a government agency subject to the Texas Public Information Act. Manufacturer 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.

Under the terms of this Contract, DIR may provide Manufacturer with information related to Customers. Manufacturer shall comply with all State of Texas privacy policy guidelines, including, but not limited to, the requirement that Manufacturer shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

5. MANUFACTURER CERTIFICATIONS.
Manufacturer certifies (i) it 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 this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has 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) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Manufacturer's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Manufacturer, which if determined adversely to the Manufacturer will have a material adverse effect on the ability of the Manufacturer to fulfill its obligations under this Contract.

6. EQUAL OPPORTUNITY COMPLIANCE.
Manufacturer 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 Manufacturer 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 Manufacturer under this Contract. If Manufacturer is found to be not in compliance with these requirements during the term of this Contract, Manufacturer agrees to take appropriate steps to correct these deficiencies. Upon request, Manufacturer 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.

7. **TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)** Manufacturer expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Manufacturer represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

8. **COMMODITY SOFTWARE.** Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Manufacturer shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Manufacturer represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

9. **RECORDS.** The Manufacturer shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all compliance checks or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, name of participating Reseller for the procurement, unit price, extended price, participating Reseller invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Manufacturer shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Manufacturer without charge. DIR shall provide Manufacturer ten (10) business days' notice prior to inspecting, auditing, and/or copying Manufacturer's records. Manufacturer's records, whether paper or electronic, shall be made available during regular office hours. Manufacturer personnel familiar with the Manufacturer's books and records shall be available to DIR staff and designees as needed. Manufacturer shall provide adequate office space to DIR staff during the performance of a compliance check.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

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

10. **ABILITY TO CONDUCT BUSINESS IN TEXAS.** The Manufacturer is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Manufacturer is a "Qualified Information Systems Manufacturer" as defined in §2157.001, Texas Government Code. All computer networking products and services offered to Customers under this Contract are listed in Manufacturer's catalogue on file with the Texas Building and Procurement Commission.

11. **QUOTATIONS, WARRANTY, AND RETURN POLICIES.** Manufacturer will adhere to their then-currently published policies concerning quotations, warranties, and return policies. Warranty and return policies for Customers will not be more

restrictive or more costly than those warranty and return policies maintained by Manufacturer for other similarly situated Customers for like products or services.

12. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION. Manufacturer and DIR agree to the following (i) a party's failure to require strict performance of any provision of this 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 disputer resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

14. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS. The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Manufacturer. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect. For individual Purchase Orders, however, the Manufacturer may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request.

16. DIR LOGO. Manufacturer and its Resellers may use the DIR logo in the promotion of this 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 Manufacturer or Reseller logo; (iii) the DIR logo is only used to communicate the availability of computer networking products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

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

18. LEASING PROVISION. The parties to this Contract may agree to provisions that allow leasing of Information Resources Technologies in addition to purchase sales.

19. SITE PREPARATION. Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Manufacturer and/or Reseller(s) prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

20. TRAINING AND TRADE SHOW PARTICIPATION. Manufacturer may be required to provide product overview training to DIR at no cost. The training will be held within the Austin, Texas area at times mutually acceptable to DIR and Manufacturer.

Manufacturer understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Manufacturer's expense. Participating Resellers may also be required to provide a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Reseller's expense. Manufacturer and all participating Resellers 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 of the use of the DIR logo in or on the Manufacturer's booth.

21. ORIENTATION MEETING. Upon 60 days from execution of the Contract, DIR may require the Manufacturer and all participating Resellers to attend an orientation meting to discuss the Contract content and procedures. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Manufacturer. DIR shall bear no cost in the time and travel of the Manufacturer or participating Resellers for attendance at the meeting.

22. USE OF SUBCONTRACTORS. Manufacturer may subcontract installation, training, warranty, or maintenance services. However, Manufacturer shall remain solely responsible for the performance of its obligations under this Contract. If Manufacturer uses any subcontractors, Manufacturer shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

23. FORCE MAJEURE. DIR, Customer, or Manufacturer may be excused from performance under this 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 immediately. 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 Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

24. TERMINATION FOR NON-APPROPRIATION. Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Manufacturer will be provided ten (10) days written notice of intent to terminate.

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

26. TERMINATION FOR CAUSE. Either DIR or Manufacturer may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) 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 this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

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

28. MANUFACTURER AND/OR RESELLER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

29. SURVIVAL. All warranty and/or service agreements that were entered into between Manufacturer and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

30. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Matt Kelly
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 936-6550, voice
(512) 475-4759, fax
Email: matt.kelly@dir.state.tx.us

APPENDIX B

PRICING INDEX AND PRODUCT OFFERING

Appendix B
Pricing Index and Product Offering

Products	Level Disc.	
6A	HP Network Peripheral Solutions	26% off MSRP
4X	HP Scanners	24% off MSRP
PQ	HP Business Mono LaserJets	26% off MSRP
AK	HP Business Color LaserJets	26% off MSRP
83	HP Personal InkJet Printers	26% off MSRP
8A	HP Personal LaserJet Printers	26% off MSRP
KN	HP Digital Cameras & Videos	24% off MSRP
KN	HP Digital Projectors	24% off MSRP
C5	Digital Senders/MFP	24% off MSRP
5M	HP All-in-one Division	26% off MSRP
30	HP Wide Format Printing	22% off MSRP
7T	HP Personal InkJet Printers	26% off MSRP
C2	HP Photo Printing	26% off MSRP
	HP Supplies	35% off MSRP