

**Texas Department of Information Resources**  
**APPENDIX D to DIR CONTRACT NUMBER DIR-TSO-3044**

**TECHNICAL SERVICES AGREEMENT**

---

This Technical Services Agreement (this "Agreement") is made effective on \_\_\_\_\_ (date), by and between \_\_\_\_\_ (*Name*), having a place of business at \_\_\_\_\_, (hereinafter "CUSTOMER"), and Access Sciences Corporation, a Texas corporation, having a place of business at 1900 West Loop South, Suite 250, Houston, Texas 77027 (hereinafter "ACCESS"). CUSTOMER and ACCESS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

**RECITALS**

WHEREAS, ACCESS is in the business of providing Technical and Managed Services to Customer in support of delivering Products, and independent of such Products (the "Services"); and

WHEREAS, CUSTOMER desires to contract with ACCESS for Services as more fully described in Exhibit 1D, "Statement of Work" attached hereto and incorporated herein by reference;

NOW, THEREFORE, in consideration of the mutual promises and agreements set out herein, the Parties, intending to be legally bound, hereby agree as follows:

1. **SERVICES**. ACCESS shall perform the Services described on the attached **Exhibit 1D Statement of Work**, and on any subsequent **Exhibit 1E – Change Order** attachments in accordance with the terms of this Agreement, at CUSTOMER facilities and at ACCESS facilities.
2. **INVOICING AND PAYMENT**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 8, Pricing, Purchase Order, Invoices, and Payments.
3. **TERM AND TERMINATION**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.A, General Provisions and Section 11.B, Termination.
4. **INTELLECTUAL PROPERTY AND OWNERSHIP**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 5, Intellectual Property Matters .
5. **CONFIDENTIALITY**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10.H, Confidentiality.
6. **WARRANTY AND LIMITATION**.

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 7.C, Product Warranty and Return Policies, then:

The Warranty and Limitation Policy as of Contract date is:  
ACCESS warrants that the Services provided under this Agreement shall perform in accordance with the specifications thereof set forth in the **Exhibit 1D – Statement of Work**, and any related **Exhibits 1E – Change Order**. ACCESS further represents and warrants that the services performed will not infringe any valid rights of any third party.

- 7. **INDEMNIFICATION AND LIABILITY LIMITATION**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10.A, Indemnification and Section 10.K, Limitation of Liability.
- 8. **ASSIGNMENT**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.D, Assignment.
- 9. **FORCE MAJEURE**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 11.C, Force Majeure.
- 10. **NON-SOLICITATION AND NONCOMPETITION**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts.

11. **NOTICES**

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10, Notifications, then:

All notices, requests, demands, and other communications under this Agreement shall be in writing and, unless otherwise directed in writing, shall be sent by commercial air courier service or registered mail to each of the Parties at the addresses shown below:

ACCESS Access Sciences Corporation 1900 West Loop South, Suite 250 Houston, TX 77027 Fax: (713) 664-4825 Attention: Anne G. Tülek	CUSTOMER (Insert Customer information)  Fax: ( ) Attention:
--	---

- 12. **TAXES**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 8.E, Tax-Exempt.
- 13. **AMENDMENTS**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.B, Modification of Contract Terms and/or Amendments.
- 14. **GOVERNING LAW**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.F, Choice of Law.
- 15. **NON-WAIVER, DISPUTE RESOLUTION, JURISDICTION AND VENUE**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 11.A, Enforcement of Contract and Dispute Resolution.

16. **STATUS.**

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, then:

The Parties will perform all services and duties hereunder as independent contractors. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant between the Parties.

17. **COMPLIANCE WITH LAWS.**

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.F, Choice of Law, then:

ACCESS agrees to comply with all local, state or federal laws applicable to employment of ACCESS' employees or pertaining to ACCESS' performance of work contracted for hereunder. ACCESS shall comply with all such laws; including, without limitation, laws requiring payment of taxes and contributions arising from such employment of ACCESS employees and any laws protecting copyrights, trade secrets or patents of third parties.

18. **INSURANCE.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10.N, Required Insurance Coverage.

19. **WORKSPACE AND EQUIPMENT.**

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts Section 10.I, Security of Premises, Equipment, Data and Personnel and Section 10.O, Use of State Property, then:

As needed and upon request by ACCESS, CUSTOMER will provide adequate workspace for ACCESS team members at those locations for the scheduled work period, including access to telephone, fax machine, and other requested information and data for performing services under this Agreement.

20. **OUT OF SCOPE.**

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, then:

Any modification requested by CUSTOMER in the Services described herein which results in a change in the period of performance of ACCESS' obligations, or the nature of the work to be performed, or an increase in ACCESS labor time and/or materials or other direct or indirect costs, shall be deemed to be "out of scope" work. If CUSTOMER requests ACCESS to provide "out of scope" services, and ACCESS agrees to provide said services, the Parties will enter into a Change Order under the Change Order Process or a new Statement of Work, as applicable. CUSTOMER and ACCESS shall prepare and execute an addendum to this Agreement, including **Exhibit 1E – Change Order**, which shall be subject to all of the terms and conditions contained in this Agreement with each incorporated herein by reference. ACCESS will commence work on such "out of scope" work upon CUSTOMER's execution of **Exhibit 1E – Change Order**, as applicable, which shall include sufficient information about the additional work, the fees for and terms of such work, and invoice procedures.

- 21. **ARTICLE HEADINGS.** The articles headings of this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.
- 22. **EXHIBITS.** The following documents are attached hereto as exhibits, the terms of which are incorporated by reference in their entirety: **Exhibit 1D Statement of Work, Exhibits 1E – Change Order.**
- 23. **PRECEDENCE.** These terms shall comply with DIR Contract DIR-TSO-3044.
- 24. **ENTIRE AGREEMENT.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of the Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

Access Sciences Corporation  
 "ACCESS"  
 1900 West Loop South, Suite 250  
 Houston, TX 77027

\_\_\_\_\_,  
 "CUSTOMER"  
 (Insert Customer address information)

\_\_\_\_\_  
 Authorized Representative Signature  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Authorized Representative Signature  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**EXHIBIT 1D: STATEMENT OF WORK**

This Statement of Work is an exhibit to the Technical Services Agreement, dated \_\_\_\_\_ by and between ACCESS and \_\_\_\_\_ (“CUSTOMER”), which is incorporated herein by reference. By executing the Agreement the Parties agree to be bound by the terms and conditions of the DIR Contract DIR-TSO-3044. This Statement of Work contains descriptions of work segments, deliverables and associated estimated fees and expenses for the work to be completed under this Agreement. In consideration for compensation as detailed in this Statement of Work, ACCESS agrees to provide Technical services to CUSTOMER, as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attach additional pages as needed.)

**STATEMENT OF WORK APPROVED AND ACCEPTED**

By ACCESS:

By CUSTOMER:

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Authorized Representative Signature

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 1D: STATEMENT OF WORK (Continued)**  
**CHANGE ORDER MANAGEMENT**

- a. *Change Management.*** Any changes to this Statement of Work, or the documents incorporated herein, must be mutually agreed upon by both ACCESS and CUSTOMER in writing through a Change Order. If there is a Project change that:
1. impacts the performance, functionality, cost, delivery date, or other technical parameter of a deliverable; or
  2. if CUSTOMER delays the project schedule for any reason; or
  3. if CUSTOMER is unable to fulfill its responsibilities defined in this Statement of Work,

and if such a change results in increased cost to ACCESS, then a change order will be submitted and processed in accordance with the Change Order Procedures, below. If ACCESS and CUSTOMER are unable to resolve the disposition of the Change Order, the project Statement of Work will remain as defined in this document.

- b. *"Change Order"*** means an agreed upon change or modification to the Deliverables, Services or other material aspect of this Statement of Work. Requests by CUSTOMER and recommendations by ACCESS for Change Orders are subject to the procedures set forth below, and will be made in writing in the form attached to the Change Order Form (Exhibit 1E).

**c. *Change Order Procedures.***

1. Either Party may request a Change Order but all Change Orders must be in writing and prepared by ACCESS. ACCESS may, at the discretion of ACCESS, charge a reasonable fee for investigating, preparing or initiating a Change Order at CUSTOMER's request.
2. Change Order requests will be processed as soon as is reasonably possible. The change will be evaluated and any project impact will be identified. The cost, scope, and schedule impact, if any, of the change will be analyzed and documented. The change impact will then be processed for CUSTOMER authorization or closure.
3. All Change Orders will be in the form attached hereto as Exhibit 1E, and will be signed by the appointed representative for each Party
4. Change Orders will include the following:
  - (a) A description of any additional work to be performed and/or any changes to the performance required of either Party.
  - (b) A statement of the impact of the work or changes on the Services, the Deliverables, or other requirements of the Agreement.
  - (c) The estimated timetable to complete the work specified in the Change Order and the impact, if any, on the delivery schedule, pricing and payments.
  - (d) Specific individuals with management or coordination responsibilities.
  - (e) The documentation to be modified or supplied as part of the work.
5. All Change Orders must be mutually agreed by the Parties. ACCESS will not commence or perform work on any such modification prior to execution and receipt of a Change Order in the form of Exhibit 1E.

**EXHIBIT 1E**  
**CHANGE ORDER**  
**FOR**  
**TECHNICAL SERVICES AGREEMENT BETWEEN ACCESS AND \_\_\_\_\_, DATED \_\_\_\_\_**  
**CHANGE ORDER NUMBER \_\_\_\_\_**

This Change Order Form is an exhibit to the Technical Services Agreement, dated \_\_\_\_\_ by and between ACCESS and \_\_\_\_\_ ("CUSTOMER"), which is incorporated herein by reference. By executing the Agreement the Parties agree to be bound by the terms and conditions of the Technical Services Agreement. This Change Order describes the work that shall be completed under this Agreement, and the relevant fees and expenses related thereto. In consideration for compensation as detailed in this Agreement, ACCESS agrees to provide Technical services to CUSTOMER, as follows:

1. Describe services or changes requested [*attach additional pages if necessary*].
2. Modifications, clarifications or supplements to description of services or changes requested in paragraph 1 above, if any [*attach additional pages if necessary*]:
3. Assignment of necessary ACCESS personnel and resources [*attach additional pages if necessary*]:
4. Impact on price, delivery schedule, payment schedule, Deliverables, and Services [*attach additional pages if necessary*]:
  - a) Price:
  - b) Delivery Schedule and Payment Schedule:
  - c) Deliverables:
  - d) Services:

**REQUEST INITIATION**

By ACCESS:

By CUSTOMER:

\_\_\_\_\_  
 Authorized Representative Signature

\_\_\_\_\_  
 Authorized Representative Signature

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CHANGE ORDER APPROVED AND ACCEPTED**

By ACCESS:

By CUSTOMER:

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Authorized Representative Signature

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_