

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

PRICEWATERHOUSECOOPERS LLP

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 PricewaterhouseCoopers LLP (hereinafter "Vendor"), with its principal place of business at 300 Madison Avenue, New York, New York, 10017.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-199, on October 30, 2012, for Cloud Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-199 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Sample Statement of Work; Exhibit 1, Vendor's Response to BAFO; Exhibit 2, Vendor's Response to RFO DIR-SDD-TMP-199, including all addenda; and Exhibit 3, RFO DIR-SDD-TMP-199, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, then Exhibit 2, and finally Exhibit 3. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

3. Service Offerings

Services available under this Contract are limited to those specified in Appendix C, Pricing Index. 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. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the sales price suggested by the manufacturer or publisher of the service.

B. Customer Discount

The minimum Customer discount for all services will be the percentage off MSRP as specified in Appendix C, Pricing Index. Customer Discount includes the DIR administrative Fee specified in Section 5.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

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

3) If pricing for Cloud assessment services available under this Contract are provided by Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to Cloud assessment services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall not subcontract any of the work as a part of this Contract. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. DIR Administrative Fee

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

E. Tax-Exempt

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

F. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

G. Changes to Prices

Vendor may change the price of any service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

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-fourths 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.

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:

Grace Windbigler
Enterprise Contract Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759

If sent to the Vendor:

Lawrence M. Hanrahan, MD, MBA
PricewaterhouseCoopers LLP
1201 Louisiana, Suite 2900
Houston, Texas 77002
Phone: (713) 356-4206
Facsimile: (813) 639-5891
Email: lawrence.m.hanrahan@us.pwc.com

7. Statement of Work, Service Agreement and Shrink/Click-wrap Agreements

A. Statement of Work and Service Agreement

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix D of this Contract. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the negotiated terms and conditions do not diminish Vendor's commitments set forth in the Appendix D, Sample Statement of Work, or this Contract.

B. Shrink/Click-wrap Agreement

Regardless of any other provision or other license or service 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 terms between Customers and Vendor, provided, however, that this section 7(B) only applies to the terms in shrink wrap and click-through agreements. **It is the Customer's responsibility to read the Shrink/Click-wrap License/Service Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license/service terms, Customer shall be responsible for negotiating with the Vendor to obtain additional changes in the Shrink/Click-wrap Agreement language.**

8. Intellectual Property Matters

A. Definitions

1. "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including, to the extent included in, or necessary to use, a deliverable in a Statement of Work, any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or

machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

5. "Vendor IP" means Vendor's working papers (as defined below), preexisting materials and any general skills, know-how, processes, or other intellectual property (including a non-client specific version of any deliverables) which Vendor may have discovered or created as a result of performing services under this Contract. The Customer has a nonexclusive, non-transferable license to use such materials included in the deliverables. Working papers are those documents developed by the Vendor incident to the performance of Vendor's engagement which are a basis for, and in support of, a Deliverable or Work Product prepared by the Vendor under a SOW.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated either expressly in the Work Product or Deliverables by Vendor or such rights as may be necessary for Customer to be able to fully enjoy the Work Product and Deliverables. Except for the license in 8(A), Vendor shall retain full ownership rights in Vendor IP, and any restrictions set forth in Section 8(H) hereunder shall not apply to Vendor IP.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product, shall be deemed the confidential information of

Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H (“Confidential Information”). Vendor shall disclose the Confidential Information only to its employees and/or personnel who have a need to know such information, and shall use the Confidential Information solely in furtherance of Vendor’s services under this Contract. Except as set forth above, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer. Confidential Information shall not include information that: (a) is or becomes publicly available other than by a breach of this Contract by Vendor; (b) is acquired by Vendor from a third party that is not, to Vendor’s knowledge, under any confidentiality obligation to the Client regarding such information; or (c) is known to Vendor prior to the date of this Contract, or that Vendor develops independently without use of the Confidential Information. Each party will protect the confidentiality of Confidential Information that it receives from the other party except as required by applicable law, statute, rule, or regulation.

F. Injunctive Relief.

The Contract is intended to protect Customer’s proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer’s business. Therefore, Vendor acknowledges and stipulates that Customer may immediately seek injunction of any material breach of the intellectual property, use, and confidentiality provisions of this Contract.

G. Return of Materials Pertaining to Work Product.

Upon conclusion of the Contract, if requested by Customer in writing, Vendor shall surrender to Customer all Confidential Information; provided, however, Vendor may retain its working papers or Customer’s Confidential Information as necessary to comply with applicable laws, rules, regulations and/or professional standards or guidelines to which a party conforms. Any copies of Customer’s Confidential Information so kept shall be retained in confidence pursuant to the terms of this Contract.

H. Vendor License to Use.

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

I. Third-Party Underlying and Derivative Works.

The parties agree that Vendor will not be providing any Third Party IP under this Contract. However, if and to the extent that any Vendor IP is embodied or reflected in the Work Product, or is necessary to provide the Services, Vendor hereby grants to the Customer, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer’s internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP and

any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

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

The parties hereby agree to the following changes to Appendix A, Standard Terms and Conditions for Services Contracts:

A. Section 2. Definitions, H. Order Fulfiller, is hereby added as follows:

H. Order Fulfiller – a vendor or contractor who is contracted with the Vendor to provide the product or services offered by the Vendor under this Contract on the Vendor's behalf.

B. Section 4. Terms and Conditions Applicable to State Agency Purchases Only, is hereby replaced in its entirety:

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when

such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later thirty (30) days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act). The parties acknowledge and agree that Vendor will not be providing any products subject to the Electronic and Information Resources Accessibility Standards under this Contract.

C. Section 5. Contract Fulfillment and Promotion, E. Vendor Logo, is hereby replaced in its entirety:

E. Vendor Logo

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

D. Section 5. Contract Fulfillment and Promotion, H. DIR Cost Avoidance, is hereby replaced in its entirety:

H. DIR Cost Avoidance

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

E. Section 5. Contract Fulfillment and Promotion, I. Customer Responsibilities, is hereby added as follows:

I. Customer Responsibilities

Customer is responsible for all management functions and decisions relating to this engagement. Customer is also responsible for the results achieved from using the Services or deliverables and it is Customer's responsibility to establish and maintain its internal controls. Customer will designate a competent member of its management to oversee the Services. Contractor expects that Customer will provide timely, accurate and complete information and reasonable assistance, and Contractor will perform the engagement on that basis.

F. Section 6. Purchase Orders, Invoices, and Payments, A. Purchase Orders, is hereby restated in its entirety:

A. Purchase Orders

All Customer Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted in writing and signed by Vendor.

G. Section 7. Contract Administration, A. Contract Administrators, 2) Vendor Contract Administrator, is hereby restated in its entirety:

I. Vendor Contract Administrator

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

H. Section 8. Vendor Responsibilities, A. Indemnification,, is hereby restated in its entirety:

A. Indemnification

1) INDEPENDENT CONTRACTOR

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

2) Acts or Omissions

Vendor shall defend, indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES, FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS OF DEFENSE, INCLUDING ATTORNEY FEES, AND EXPENSES, arising out of, or resulting from wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASIGNEES, AND/OR DESIGNEES SHALL NOT VOID THIS INDEMNIFICATION OBLIGATION HOWEVER, VENDOR'S SHARE OF FINAL RESPONSIBILITY FOR COSTS, FEES, EXPENSES, AND DAMAGES SHALL BE LIMITED TO ITS PROPORTION OF LIABILITY FOR THE CLAIM. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES (FOR PURPOSES OF THIS PROVISION, "STATE") from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. No such indemnification shall apply to claims arising solely from the State's misuse or modification of Vendor's services or deliverables; the State's failure to use correction or enhancements made available by Vendor; the State's use of such services or deliverables in combination with any product, materials or information not provided by Vendor; or information, material or specifications provided by or on behalf of the State.

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

I. Section 8. Vendor Responsibilities, C. Vendor Certifications, item (vii), is hereby restated in its entirety:

(vii) Vendor and its principals that are performing services under this Contract are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

J. Section 8. Vendor Responsibilities, C. Vendor Certifications, item (xiii), is hereby restated in its entirety:

(xiii) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas. The parties agree, however, that Vendor will not be providing any products or materials under this Contract.

K. Section 8. Vendor Responsibilities, C. Vendor Certifications, item (xvi), is hereby restated in its entirety:

(xvi) Vendor represents and warrants that to the knowledge of the Engagement Partner, the provision of goods and services or other performance by Vendor under the Contract will not constitute a conflict of interest. "Conflict of Interest" is defined as those situations wherein such personnel are unable to render impartial assistance, advice, or services to DIR.

L. Section 8. Vendor Responsibilities, C. Vendor Certifications, item (xv), is hereby restated in its entirety:

(xv) Vendor represents and warrants that the Customer's payment and receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code, the foregoing statutes relate to restrictions on lobbying expenditures and compensation; Vendor is not providing lobbying to Customer under this Contract, nor otherwise under this Contract seeking to influence passage or defeat any legislation.

M. Section 8. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel, is hereby restated in its entirety:

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, and other tangible property of the Customer, in accordance with the Customer security requirements provided to Vendor in advance or onsite. Vendor shall preserve the safety, security and integrity of the Customer Data, with the understanding that Customer is responsible for its own data backup for any Data provided to Vendor. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements under this section, then Customer may immediately terminate its Purchase Order and related Service Agreement.

N. Section 8. Vendor Responsibilities, J. Background and/or Criminal History Investigation, is hereby restated in its entirety:

J. Background and/or Criminal History Investigation

To the extent agreed upon by the parties for a particular statement of work, prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or

subcontractor of the Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

O. Section 8. Vendor Responsibilities, K. Limitation of Liability, is hereby restated in its entirety:

K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the SOW giving rise to the claim during the twelve months immediately preceding the accrual of the claim or cause of action. (All PwC Firms and Contractors performing services under this Contract must comply with all confidentiality and security requirements included in the Agreement.) Vendor is the U.S. firm of the global network of separate and independent PricewaterhouseCoopers firms (exclusive of Vendor, the "Other PwC Firms"). During its performance of the Services, Vendor may, in its discretion, draw on the resources of and/or contract with its subsidiaries, the Other PwC Firms and/or third party contractors (each, a "PwC Contractor"), in each case within or outside of the United States, for internal, administrative and/or regulatory compliance purposes. Client agrees that Vendor may provide information Vendor receives in connection with this Agreement to the PwC Contractors for such purposes. Vendor will be solely responsible for the provision of the Services and for the protection of the information provided to the PwC Contractors.

Vendor will not send or store any Customer data or information outside of the US or allow other PwC Firms or PwC Contractors to do so.

P. Section 8. Vendor Responsibilities, L. Purchase of Commodity Items, is hereby restated in its entirety:

L. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 8.L.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

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

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

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from Subsection 8.L.

The parties understand that the sole commodity item being procured under this contract is Cloud Assessment services.

Q. Section 8. Vendor Responsibilities, N. Prohibited Conduct, is hereby restated in its entirety:

N. Prohibited Conduct

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor’s employees performing services under this Contract, nor any subcontractor employees performing services under this Contract, have: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated Vendor’s response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

R. Section 8. Vendor Responsibilities, O. Required Insurance Coverage, is hereby restated in its entirety:

O. Required Insurance Coverage

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

remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

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

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

2) Workers' Compensation Insurance

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

3) Business Automobile Liability Insurance

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 third party property damage. The policy shall contain the following in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and,
- b) Additional Insured.

S. Section 8. Vendor Responsibilities, T. Secure Erasure of Hard Disk Managed Services Products and/or Services, is hereby restated in its entirety:

T. Secure Erasure of Hard Disk Managed Services Products and/or Services

Vendor agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC 202.

The parties understand and agree that Vendor will not be providing any managed service products and/or services equipped with hard disk drives under this Contract.

T. Section 8. Vendor Responsibilities, U. Deceptive Trade Practices, paragraph b) only, is hereby restated in its entirety:

U. Deceptive Trade Practices

b) Vendor certifies that to the knowledge of the Vendor engagement partner, it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

U. NEW Section 8. Vendor Responsibilities, W. Performance Standards, is hereby added:

W. Performance Standards

Vendor will perform the Services in accordance with the Standard for Consulting Services established by the American Institute of Certified Public Accountants. Accordingly, Vendor will not provide an audit or attest opinion or other form of assurance, and Vendor will not verify or audit any information provided to Vendor.

V. NEW Section 9. Contract Enforcement, paragraph 7) only, is hereby added:

9. Contract Enforcement

7) If Customer terminates for convenience, Vendor shall be compensated by Customer for all services performed in accordance with the terms of the Contract by Vendor prior to the date of notice of termination, subject to the availability of appropriated funds.

W. Section 9. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order, is restated in its entirety:

b) Purchase Order

Customer or Vendor may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 9.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

X. Section 9. Contract Enforcement, B. Termination, 5) Customer Rights Under Termination, is restated in its entirety:

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its intellectual property rights granted to Customer under the Contract and the relevant Purchase. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

Y. Section 9. Contract Enforcement, C. Force Majeure, is hereby restated in its entirety:

C. Force Majeure

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, or other cause beyond the reasonable control of the non-performing party, but not including the acts or omissions of any contractor, subcontractor or supplier of Vendor 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.

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

PricewaterhouseCoopers LLP

Authorized By: _/Signature on File/_____

Name: __Lawrence M. Hanrahan_____

Title: __Principal_____

Date: __10/30/2014_____

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

Authorized By: _/Signature on File/_____

Name: **Karen Robinson**

Title: **Executive Director**

Date: __11/05/14_____

Office of General Counsel: _/Signature on File/__11/03/14_____