

**AMENDMENT NUMBER 1
TO
CONTRACT NO. DIR-SDD-1857
BETWEEN
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES
AND
FLASHBACK DATA, LLC**

This Amendment Number 1 to Contract Number DIR-SDD-1857 (“Contract”) is between the Department of Information Resources (“DIR”) and Flashback Data, LLC. DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract**, is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through June 6, 2015 or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for one (1) additional one-year term.

2. **Contract, Section 4. Pricing**, is hereby restated in its entirety as follows:

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

3. **Contract, Section 4. Pricing A - G** is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Services Contracts dated 05/02/14 as attached hereto.

4. **Contract, Section 5. DIR Administrative Fee** is hereby restated in its entirety as follows:

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00. The effective date of this change will be July 1, 2014.

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 by Vendor in the price to the Customer.

5. **Contract, Section 6. Notification** is hereby restated in its entirety as follows:

6. Notification

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

If sent to the State:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759
Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Michael O'Connell
Flashback Data, LLC
4029 South Capital of Texas Highway
Suite 224
Austin, Texas 78704
Phone: (512) 301-5700
Facsimile: (512) 301-0333
Email: doc@flashbackdata.com

6. **Contract, Section 8. Intellectual Property Matters, A - L** is deleted and is hereby restated in its entirety in **Appendix A, Standard Terms and Conditions For Services Contracts, Section 4. Intellectual Property Matters** dated 05/02/14 as attached hereto.
7. **Appendix A, Standard Terms and Conditions for Services Contracts dated 12/14/11**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Services Contracts dated 05/02/14**, as attached.
8. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.**

A. Appendix A, Section 8. Vendor Responsibilities, A. Indemnification, 4) PROPERTY DAMAGE, is hereby transitioned into Section 9. Vendor Responsibilities, A. Indemnification, 4) PROPERTY DAMAGE. It is replaced in its entirety with the following:

4) PROPERTY DAMAGE

DIR ACKNOWLEDGES AND AGREES (I) THAT EQUIPMENT, DATA, MEDIA OR OTHER ELECTRONIC DEVICES PROVIDED TO VENDOR ("MATERIALS") MAY, AND OFTEN WILL, BE DAMAGED PRIOR TO THE VENDOR'S RECEIPT OR MAY

FAIL IN VENDOR'S POSSESSION, (II) THAT NO ELECTRONIC DEVICE IS 100% RELIABLE AND FAILURES DO PERIODICALLY OCCUR, AND (III) THAT THE EFFORTS OF VENDOR AND/OR ITS AGENTS, CONTRACTORS OR SUPPLIERS TO PERFORM THE SERVICES UNDER THE CONTRACT MAY RESULT IN FURTHER DAMAGE OR DESTRUCTION OF THE MATERIALS. DIR AGREES THAT VENDOR SHALL NOT BE LIABLE FOR ANY DAMAGE OR FAILURE THAT MAY OCCUR TO THE MATERIALS DURING THE PERFORMANCE OF THE SERVICES OR FOR DAMAGE TO OR LOSS OF MATERIALS THAT OCCURS DURING SHIPPING OR TRANSIT.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment 1, and then Contract DIR-SDD-1857.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than June 6, 2014.

Flashback Data, LLC

Authorized By: Signature on file

Name: Michael O'Connell

Title: President

Date: 5/15/2014

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: 6/3/2014

General Counsel: D.R. Brown 6/3/2014