

**Amendment Number 5**  
**to**  
**Contract Number DIR-SDD-1918**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**CA, INC**

This Amendment Number 5 to Contract Number DIR-SDD-1918 (“Contract”) is between the Department of Information Resources (“DIR”) and CA, Inc. (“Vendor”). 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 eleven (11) months through September 24, 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 up to one (1) additional one-year renewal 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 8, 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 - H** is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 8. Pricing, Purchase Orders, Invoices and Payments, dated 05/02/14 as attached hereto.

4. **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. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 936-2233  
Facsimile: (512) 475-4759  
Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:

Ms. Constance Roman  
Principal Contracts Manager  
CA, Inc.  
13810 South Eastgate Way  
Suite 500  
Bellevue, Washington 98005  
Phone: (425) 201-3570  
Email: [constance.roman@ca.com](mailto:constance.roman@ca.com)

5. **Contract, Section 7. Software License Agreements** is hereby restated by adding **C. Conflicting or Additional Terms** in its entirety as follows:

**C. Conflicting or Additional Terms**

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

6. **Contract, Section 8. Intellectual Property Matters** is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 5. Intellectual Property Matters, dated 05/02/14 as attached hereto.
7. **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts**, is hereby restated in its entirety and replaced with the attached **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts** dated 05/02/2014.
8. **Authorized Exceptions to Appendix A, Standard Terms and Conditions For Product and Related Service Contracts dated 05/02/2014** as follows:

- A. Appendix A, Section 3, Definitions, A. Customer** is hereby replaced in its entirety as follows:

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory

Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;

4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;

5) A local workforce development board created under Section 2308.253;

6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;

7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;

8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and

9) A nonprofit organization that provides affordable housing.

**B. Appendix A, Section 3, Definitions, B. Compliance Check** is hereby replaced in its entirety as follows:

**B. Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor subject to an NDA between third party auditor and CA, DIR Internal Audit department, or DIR contract management staff or their designees.

**C. Appendix A, Section 5. Intellectual Property Matters** is hereby replaced in its entirety as follows:

**5. Intellectual Property Matters**

"Work Product" means all items produced for Customer's use under a SOW except for custom code application development work unique to Customer and void of CA's proprietary Licensed Programs and other intellectual property, including any derivatives and extensions thereof.

CA retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all CA Offerings and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties.

CA grants to Customer, a non-exclusive, limited, non-transferable license to use the Deliverables and Modifications for internal business purposes subject to terms of the Agreement. Where the Deliverables or Modifications are to be used in conjunction with CA software then the license to use the Deliverables or Modifications shall be consistent with the usage limitations as set out in the license agreement for such CA software.

**D. Appendix A, Section 7, Contract Fulfillment and Promotion, H. Trade Show Participation** is hereby replaced in its entirety as follows:

## **H. Trade Show Participation**

At DIR's discretion, Vendor may be required to participate up to two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor 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 or the use of the DIR logo in or on the Vendor's booth.

## **E. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments** is hereby renumbered and restated as follows:

### **A. Manufacturer's Suggested Retail Price (MSRP)**

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product. "GSA Contract Price" is defined as the product sales price available to customers pursuant to, and under the term of, GSA Contract No. GS-35F-0823M ("GSA Contract") held by Vendor.

### **B. Customer Discount**

The minimum Customer discount for all products and services will be the percentage off MSRP or the GSA Contract Price as specified in Appendix C, Pricing Index. Notwithstanding the foregoing, the software product discount listed above does not cover maintenance renewals for existing software. Renewals of these products will be calculated based on prior contract pricing.

### **C. Customer Price**

- 1) Customer Price is defined as in Appendix C, Pricing Index.
- 2) Customers purchasing products and 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 products or services available under this Contract are provided at a lower price to: (i) an eligible Customer ("Customer" as defined in Section 9 herein) who is not purchasing those products or services under this Contract or (ii) any other entity (excluding CA authorized distributors and resellers that may include CA authorized system integrators, services providers, or outsourcers) or consortia authorized by Texas law to sell said products and services to eligible Customers, and if such products or services are purchased under the same terms and conditions of this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or 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. This Contract shall be amended within ten (10) business days to reflect the lower price.

#### **D. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. CA Software shall be delivered by electronic delivery (“ESD”) or if in tangible media CPT shipments will be Free On Board 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.

#### **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**

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

- 1) Price increase or decrease change requests must be requested with a signed cover letter indicating the change in price. Price increase requests must be accompanied by a copy of the manufacturer or publisher’s price list.
- 2) Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.
- 3) Requests for price increases will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Increases that are not accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted increase is rejected, Vendor may request that the product or service rejected be removed from the Contract. The product or service will be removed from the Contract upon execution of a written Contract amendment, which shall be transmitted to Vendor by DIR within thirty (30) calendar days after receipt of the written request to remove the product or service and executed by both parties without undue delay. Existing pricing must be honored up to the date of execution of the

Contract amendment. Prices may not be increased for at least ninety (90) calendar days after the contract start date. Price reductions will be accepted at any time.

#### **H. Purchase Orders**

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

#### **I. Invoices**

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase 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 product or services by the Customer.

3) The administrative fee as set forth in Section 5.A., DIR Administrative Fee, of the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

#### **J. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

#### **F. Appendix A, Section 10. Vendor Responsibilities, N. Required Insurance Coverage, first paragraph is hereby replaced in its entirety as follows:**

##### **N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business 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 rated at least A- by A.M. Best, licensed in the State of Texas,

and authorized to provide the corresponding coverage. DIR will be named as Additional Insured on all required coverage. Upon request by Customer at time of purchase order, Customer shall also be named as Additional Insured. 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:

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 Number 5, then Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment Number 1 and then the Contract.

**(Remainder of page left blank intentionally)**

**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 October 24, 2014.

CA, INC.

Authorized By: Signature on File

Name: Tina M. Ratcliff

Title: Sr. Director - Contracts

Date: 10/23/14

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: 10/24/14

Office of  
General Counsel: Mark Howard 10/24/14