

Amendment Number 1
to
Contract Number DIR-SDD-2024
between
State of Texas, acting by and through the Department of Information Resources
and
Houston Communications, Inc.

This Amendment Number 1 to Contract Number DIR-SDD-2024 (“Contract”) is between the Department of Information Resources (“DIR”) and Houston Communications, 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 one (1) year through January 15, 2015 or unless earlier 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 two (2) additional one-year terms.

2. Contract, Section 5, DIR Administrative Fee, A, 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 **February 1, 2014**.

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

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

If sent to the State:

Mary Cheryl Dorwart
Director, Technology Sourcing Office
Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: mc.dorwart@dir.texas.gov

If sent to the Vendor:

Duane Johnson
Houston Communications, Inc.
1105 Industrial Blvd
Sugar Land, Texas 77478
Phone: (281) 491-1616
Email: duane@houstoncommunications.com

4. **Appendix A, Section 4, General Provisions, F. Choice of Law**, is hereby restated in its entirety as follows:

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

5. **Appendix A, Section 9, Vendor Responsibilities, A. Indemnification**, is hereby re-numbered and restated in its entirety as follows:

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 indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any 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. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS,

ASSIGNEES, AND/OR DESIGNEES 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 VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) 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.

6. Appendix A, Section 9, Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE, is hereby restated in its entirety as follows:

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) Vendor agrees and acknowledges that during the existence of this Contract, Vendor shall be entirely responsible for the liability and payment of Vendor's AND Vendor's EMPLOYEES' TAXES of whatever kind, arising out of the performances in this Contract. Vendor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS,

REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

7. Appendix A, Section 9, Vendor Responsibilities, G. Responsibility for Actions, 2), is hereby restated in its entirety as follows:

2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Appendix A to the RFO and/or Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 1, and then the Contract DIR- SDD-2024.

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IN WITNESS WHEREOF, the parties hereby execute this Amendment Number 1 to be effective as of the date of last signature, but in all events not later than January 15, 2014.

Houston Communications, Inc.

Authorized By: Signature on file

Name: Duane Johnson

Title: President & CEO

Date: 1/9/14

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: 1-23-14

Office of General Counsel: Signature on file 1-23-14