

**AMENDMENT NUMBER 2
TO
CONTRACT NUMBER DIR-SDD-2501
BETWEEN
STATE OF TEXAS, ACTING BY AND THROUGH THE DEPARTMENT OF
INFORMATION RESOURCES
AND
HP ENTERPRISE SERVICES, LLC**

This Amendment Number 2 to Contract Number DIR-SDD-2501 (“Contract”) is between the Department of Information Resources (“DIR”) and HP Enterprise Services, LLC (“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 August 9, 2016 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 3. Service Offerings, is hereby restated in its entirety as follows:

Services available under this Contract are limited to the Deliverables-Based Information Technology Services Technology Categories as specified below. 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.

No hardware or software products and related services may be sold through this contract. Any products needed to deliver final services must be procured through another contract vehicle. Examples of these products include: Software as a Service (SaaS), subscriptions, annual license maintenance and support, and web hosting.

Application Maintenance and Support

- 1) Definition: Application Maintenance and Support includes the skills and requirements for supporting application systems, including troubleshooting, modifying, maintaining and enhancing legacy systems. Application Maintenance and Support also applies to applications running in a production environment.
- 2) Examples of included services: research, analysis, design, programming, testing, documenting and implementing maintenance changes; correcting software errors; modifying reports and ensuring accurate report runs; making modifications to the applications and documentation; writing ad hoc queries; loading and applying changes to the software language and/or database in which the application is written; providing corrections for production or any changes

needed and participation in disaster recovery testing, planning and documentation. Services may need to be available 24/7 or on an on-call basis.

Project Management

- 1) Definition: Project Management service providers may perform any or all of the project management processes identified by the Project Management Institute as published in Table 3-45 of the PMBOK® Guide, Third Edition or most recent.
- 2) Examples of included services: utilizing the Customer's tools and processes, using off-the-shelf tools or using Vendor's own proprietary tools and processes to manage a project.

Technology Upgrade/Migration and Transformation

- 1) Definition: Technology Upgrade/Migration may be required to increase business functionality, reengineer a business function, keep current with vendor upgrades or when upgrading existing technology. Technology Transformation may be accomplished by converting/migrating legacy applications to new technology either with or without new business functionality or it may include introducing new technology into the enterprise. Technology Upgrade/Migration may also include providing website content accessibility compliance.
 - 2) Examples of included services: assessments of the current application portfolio, evaluation of the technology assets before beginning technology transformation and Business Case development for justification of an initiative. Also included are: technology transformations, which may include, appropriate Return on Investment (ROI), benchmarks and milestones. The following activities may also be included: planning, analysis, requirements development, proof of concept, deployment, implementation, integration, remediation, data migration, documentation, application programming and support services; and training support.
3. **Contract, Section 4. Pricing**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts, **Section 7. Pricing, Purchase Orders, Invoices and Payments**.
 4. **Contract, Section 5. DIR Administrative Fee**, is hereby re-numbered as **Section 4. Administrative Fee AND** is hereby restated in its entirety as follows:

4. 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 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 was October 1, 2013.

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.

5. **Contract, Section 9. Intellectual Property Matters**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts, **Section 4. Intellectual Property Matters**.
6. **Contract, Sections 6 - 10** are hereby re-numbered **Sections 5 – 8**, as follows:
 - A. Section 6. Notification is re-numbered as **Section 5. Notification**;
 - B. Section 7. Statement of Work is re-numbered as **Section 6. Statement of Work**;
 - C. Section 8. Customer Satisfaction Metrics is re-numbered as **Section 7. Customer Satisfaction Metrics**;
 - D. Section 10. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts is re-numbered **Section 8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**.
7. **Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts dated 12/16/12**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts dated 07/21/15**, as attached.
8. **Appendix A, Section 2. Definitions, I. Statement of Work**, is hereby restated in its entirety as follows:

Statement of Work Solicitation (SOW) – A document, hereinafter referred to as a SOW Solicitation, that may be posted on DIR’s website outlining the description of Services to be performed for a specified DIR Customer. SOW Solicitations may include: background, description of deliverables, acceptance criteria for deliverables, service levels for deliverables, duration of engagement with the DIR Customer, additional Customer terms and conditions and other relevant information.

9. Appendix A, Section 4. Intellectual Property Matters, A. Definitions, 1, is hereby restated in its entirety as follows:

“Work Product” and “Deliverables” means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including 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.

10. Appendix A. Section 4. Intellectual Property Matters, A. Definitions, 4, is hereby restated in its entirety as follows:

“Third Party IP” means the Intellectual Property Rights of any third party not a party to this Contract.

11. Appendix A, Section 4. Intellectual Property Matters, B. Ownership, is hereby restated in its entirety as follows:

This Section replaces Section 9.W. of Appendix A in its entirety:
State License.

- (a) The Deliverable(s) and all Intellectual Property Rights associated with those Deliverable(s) will be owned by the Vendor at creation and will not be considered works made for hire. The Vendor grants to the Customer a non-exclusive, royalty-free, site-wide, irrevocable license to use, copy, and distribute the Deliverable(s) and related documentation according to the terms and conditions of this Contract and Supporting Materials. For the purposes of this license, “site-wide” includes any State of Texas office regardless of its physical location.
- (b) The State may modify the Deliverable(s) and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in the Deliverable(s) other than those granted in this Contract.
- (c) The State may copy the Deliverable(s) to multiple hard drives or networks.
- (d) The State may copy the Deliverable(s) in the course of routine backups for the purpose of recovery.
- (e) In the event that the Vendor ceases to conduct business, or ceases to support the Deliverable(s), the State's license will not cease. The license may be terminated if used in a manner that would violate the terms of this Contract and Supporting Material.
- (f) Notwithstanding the license grants, any Third Party IP incorporated into any licensed Deliverable(s) will be subject to the license terms applicable to such Third Party IP.
- (g) The State and the Vendor will continue to own their respective Intellectual Property Rights developed before entering into the Contract or developed

outside the scope of this Contract, and all modifications or derivative works thereof. Any software licensed through the Vendor and sold to the State will be licensed directly to the State.

12. Appendix A, Section 4, Intellectual Property Matters, C. Further Actions, is hereby deleted in its entirety.

13. Appendix A, Section 4, Intellectual Property Matters, D. Waiver of Moral Rights, is hereby deleted in its entirety.

14. Appendix A, Section 4, Intellectual Property Matters, E. Confidentiality, is hereby restated in its entirety as follows:

E. Confidentiality.

1) Definitions

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

- (a) disclosable under the Texas Public Information Act;
- (b) now available or becomes available to the public without breach of this Contract;
- (c) released in writing by the disclosing party;
- (d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
- (e) publicly disclosed pursuant to federal or state law; or
- (f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

(2) Protection and Destruction of Confidential Information

- (a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Vendor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.
- (b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Vendor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence.

- (c) Upon termination of the Contract, Vendor must promptly return the State's Confidential Information or certify to the State that Vendor has destroyed all of the State's Confidential Information.

- (3) Exclusions
The provisions of this Section will not apply where the receiving party is required by law to disclose or retain the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request to the extent legally permissible; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

- (4) No Obligation to Disclose
Nothing contained in this Section will be construed as obligating a party to disclose any particular Confidential Information to the other party.

15. Appendix A, Section 4. Intellectual Property Matters, I. Third-Party Underlying and Derivative Works, is hereby restated in its entirety as follows:

In response to a request, the Vendor will disclose the use or incorporation of any Third Party IP into the Work Product or Deliverables and a description of the ownership and use rights that will be provided to the Customer. At the time of delivery, the Vendor will provide in writing the name and use of any Third Party IP, including information regarding the Vendor's authorization to include and utilize such Third Party IP. The notice shall include a copy of any ownership agreement or license that authorizes the Vendor to use the Third Party IP. If Vendor procures any Third Party IP for the State, then Vendor must assign or otherwise transfer to the State, or afford the State the benefits of, any license rights, including the manufacturer's warranty, for the Third Party IP.

16. Appendix A, Section 4. Intellectual Property Matters, J. Agreement with Subcontracts, is hereby restated in its entirety as follows:

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. Vendor may redact confidential information, but in any event must provide copies sufficient to ensure Vendor's compliance with this section.

17. Appendix A, Section 4. Intellectual Property Matters, K. License to Customer, is hereby deleted in its entirety.

18. Appendix A, Section 4. Intellectual Property Matters, L. Vendor Development Rights, is hereby restated in its entirety as follows:

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.

19. Appendix A, Section 6. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, 1) Vendor Website, is hereby restated in its entirety as follows:

1) Vendor Website

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a website specific to the service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the services offered, service specifications, contact information for Vendor, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph D of this Section, and contain a link to the DIR website for the Contract.

20. Appendix A, Section 7. Pricing, Purchase Orders, Invoices, and Payments, A. Purchase Orders, is hereby replaced in its entirety as follows:

All Customer Purchase Orders will be placed directly with the Vendor after negotiation and agreement of a finalized Statement of Work in accordance with this Contract. All Purchase Orders shall be governed by the terms of DIR-SDD-2501. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor.

21. Appendix A, Section 7. Pricing, Purchase Orders, Invoices, and Payments, C. Payments, is hereby replaced in its entirety as follows:

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. Payment under the Contract shall not foreclose the right to recover wrongful payments. Any applicable payment schedule, as negotiated by the

parties, will be set forth in the Statement of Work.

22. Appendix A, Section 8. Contract Administration, C. Records and Audit, Subsection 3, is hereby restated in its entirety as follows:

Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. Subject to the Vendor's reasonable objection to the audit determination, if the difference between the Vendor's actual payment and the correct DIR Administrative Fee amount, as determined by an audit, is greater than 3%, then the Vendor must pay all reasonable audit costs within thirty (30) days of receipt.

23. Appendix A, Section 9, Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions, is hereby restated in its entirety as follows:

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 THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS FOR PHYSICAL INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, OR ASSOCIATED ECONOMIC LOSS 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.

24. Appendix A, Section 9. Vendor Responsibilities, A. Indemnification, Subsection 3)c, is hereby restated in its entirety as follows:

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. If Vendor determines that none of these alternatives is reasonably available, then Vendor will issue Customer a refund equal to a pro-rata portion of the charges paid by Customer for the infringing Services or Deliverable upon discontinuance of the Services or return of the Deliverable to Vendor.

25. Appendix A, Section 9. Vendor Responsibilities, I. Security of Premises, Equipment Data, and Personnel, is hereby replaced in its entirety as follows:

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 use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor has the duty to ensure that all such equipment, property and Data are used only for official Customer business. Vendor shall cooperate and ensure that applicable non-disclosure agreements as may be required by Customers are executed. Subject to Vendor's review of approval of each Customer's non-disclosure agreements prior to execution.

26. Appendix A, Section 9. Vendor Responsibilities, N. Required Insurance Coverage, is hereby replaced in its entirety:

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 A- VII rated by A.M. Best, licensed in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be included as Additional Insureds on all required coverage, except Workers' Compensation Insurance. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued

to Vendor there under. The acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000 [Medical Expense each person: \$5,000; Personal Injury and Advertising Liability: \$1,000,000; Products /Completed Operations Aggregate Limit: \$2,000,000; Damage to Premises Rented to You: \$50,000]. 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 included as an additional insured; this requirement may be met through the use of a “blanket” additional insured endorsement.
- d) Waiver of Transfer Right of Recovery against Others in favor of DIR and/or Customer. This requirement may be met through the use of a “blanket” waiver of subrogation endorsement.

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 \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE POLICY LIMIT AND \$1,000,000 PER DISEASE PER EMPLOYEE.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall include the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; this requirement may be met through the use of a “blanket” waiver of subrogation endorsement.
- b) Additional Insured. This requirement may be met through the use of a “blanket” additional insured endorsement.

27. Appendix A, Section 9. Vendor Responsibilities, T. Substitution of Workers, is hereby restated in its entirety as follows:

A. If Customer determines a Worker has not followed applicable safety standards or for other not unlawful reasons is deemed unacceptable, Customer will direct Vendor to resolve the complaint or, remove its Worker immediately. If Vendor is unable to

resolve the complaint immediately or provide a satisfactory substitute Worker within ten (10) business days, the Purchase Order may be terminated for fault and Customer may select another Vendor to finish the remaining work.

B. If a Vendor must substitute a worker due to resignation, termination or other such event, Vendor shall have up to ten (10) business days to replace the Worker with a substitute satisfactory to DIR and its Customer. Vendor shall use its best efforts to provide a substitute Worker at the same, or a higher level of experience and skill than those of the replaced Worker. If the Vendor is unable to provide a satisfactory substitute Worker within ten (10) business days, the appropriate Purchase Order may be terminated for fault and the Customer may select another Vendor to finish the remaining work.

28. Appendix A, Section 9. Vendor Responsibilities, V. No Solicitation of State Employees, is hereby restated in its entirety as follows:

- 1) Vendor shall not solicit, directly or indirectly, any employee of DIR who is associated with this Contract for a period of 90 calendar days following completion of the Contract. Further, Vendor shall not solicit for a period of 90 days following completion of the SOW, directly or indirectly, any employee of a DIR Customer who has participated in any projects on which the Vendor's Workers have been assigned.
- 2) DIR and its Customer agree not to solicit employees of the Vendor, during the term of the appropriate Work Order and for a period of twelve (12) months thereafter.
- 3) Neither party shall be prevented from hiring such employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to such employees.

29. Appendix A, Section 9. Vendor Responsibilities, X. Warranty, is hereby restated in its entirety as follows:

1) The Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor has made errors in completed deliverable. Customer will immediately inform the Vendor of the Customer's determination. The Vendor shall make such corrections and revisions as are necessary so that the deliverables complained of are acceptable to Customer and shall be corrected without cost to Customer. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original deliverable.

2) Vendor warrants that the Services will be performed in a good and workmanlike manner. Vendor will re-perform any Services not performed in accordance with the

warranty in this Section (Warranty) provided that Vendor receives written notice from the DIR Customer within thirty (30) calendar days after such Services were performed. This will be Customer's sole and exclusive remedy for a breach of the warranty in this Section (Warranty) but not of the Contract.

3) Services Warranties Exclusions:

Vendor will not be responsible for a breach of warranty that would not have occurred but for:

- a) changes to a Deliverable that were implemented by DIR Customer or a third party without Vendor's prior written authorization;
- b) changes to software or hardware with which the Work Product and Deliverable operates or interfaces, or on which the Deliverable or the Technical Services otherwise rely, made by DIR Customer or a third party, including the vendors of such software or hardware without Vendor's prior written authorization;
- c) errors or defects in software or hardware with which the Work Product and Deliverable operates or interfaces, or on which the Work Product and Deliverable or Services otherwise rely (excluding Vendor Branded hardware and software provided in connection with the Deliverable); or
- d) improper use or operation of a Deliverable or any portion thereof.

4) Work Products and Deliverables Warranty Disclaimer:

VENDOR DOES NOT WARRANT THAT WORK PRODUCTS AND DELIVERABLES WILL BE ERROR FREE OR THAT THEY WILL BE COMPATIBLE WITH PRESENT OR FUTURE PRODUCTS OF Vendor OR OTHER VENDOR.

5) General Warranty Exclusions:

Vendor is not obligated to provide warranty services or Support for any claims resulting from:

- (a) improper site preparation, or site or environmental conditions that do not conform to Vendor's site specifications;
- (b) DIR Customer's non-compliance with Specifications or Transaction Documents;
- (c) improper or inadequate maintenance or calibration;
- (d) DIR Customer or third-party media, software, interfacing, supplies, or other products;
- (e) modifications not performed or authorized by Vendor;
- (f) virus, infection, worm or similar malicious code not introduced by Vendor; or
- (g) abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by DIR Customer, or other causes beyond Vendor's control.

6) Non-Vendor Branded Products and Services. Vendor provides third-party products, software, and services that are not Vendor Branded "AS IS" without warranties of any kind, although the original manufacturers or third party suppliers of such products, software and services may provide their own warranties.

7) Disclaimer. VENDOR DOES NOT GRANT, AND HEREBY DISCLAIMS, ANY WARRANTY OR CONDITION THAT ANY SERVICE, SOFTWARE, HARDWARE, DELIVERABLES, OR OTHER MATERIALS PROVIDED UNDER THIS CONTRACT WILL BE UNINTERRUPTED OR ERROR FREE. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THIS CONTRACT ARE EXCLUSIVE. NO OTHER WARRANTY OR CONDITION, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY VENDOR OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW, VENDOR DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NOTHING HEREIN LIMITS OR PRECLUDES VENDOR'S OBLIGATION OTHERWISE UNDER THE CONTRACT, INCLUDING BUT NOT LIMITED TO INDEMNIFICATION OBLIGATIONS.

30. Appendix A, Section 10. Contract Enforcement, 6) Vendor or Order Fulfiller Rights Under Termination, is hereby restated in its entirety as follows:

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, 2) any applicable early termination fees agreed to in such Purchase Order, and 3) Customer will receive all work in progress for which the Customer has paid. The parties will attempt to reach agreement on the value to the Customer of any incomplete work in progress. If they reach an acceptable figure, Customer will pay it upon acceptance of the incomplete work.

Changes affected through this amendment shall only affect any statements of work signed after the effective date of Amendment 2.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. DIR retains the right to require further amendment to the Contract to update its terms and conditions as may be reasonable, necessary or required. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 2, then Amendment 1, and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of August 9, 2015.

HP ENTERPRISE SERVICES, LLC

Authorized By: Signature on File

Name: Ernest E. Sanders

Title: Account Executive

Date: 11/06/2015

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

Authorized By: /Signature on File/

Name: Sally Ward for Dale Richardson

Title: Chief Operations Officer

Date: 11/19/15

Legal: /Signature on File/ 11/18/15