

Amendment Number 2
to
Contract Number DIR-TSO-2521
between
State of Texas, acting by and through the Department of Information Resources
and
EXECUTIVE INFORMATION SYSTEMS, LLC (EIS)

This Amendment Number 2 to Contract Number DIR-TSO-2521 (“Contract”) is between the Department of Information Resources (“DIR”) and Executive Information Systems, LLC (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **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 02/04/2015.
2. **Authorized Exceptions to Appendix A, Standard Terms and Conditions For Product and Related Service Contracts** dated **02/04/2015**.

A. Appendix A, Section 5. Intellectual Property Matters, M. is hereby added as follows:

Notwithstanding anything else contained to the contrary in this Section 5, the parties acknowledge and agree that SAS Institute Inc. shall own all right, title, and interest in all of its Vendor IP, as well as (i) all SAS software licensed to any Customer hereunder, as well as any derivatives (whether or not pre-existing) of its existing intellectual property created at any time (including in the course of performing services for any Customer), and (ii) any concepts, techniques, skills, inventions or ideas (whether or not pre-existing) that are inherently disclosed or developed through the performance of the services (collectively, “Existing IP”). No other term or provision shall otherwise operate to transfer ownership in the Existing IP to DIR, any Customer, or any other third party. To the extent any Existing IP is embedded within any Work Product delivered to DIR or any Customer hereunder, SAS hereby grants Customer (or DIR, applicable), a perpetual, nontransferable, non-assignable, royalty-free license to use such Existing IP within such Work Product only with the SAS software with which the Work Product is designed to operate, and only for as long as Customer maintains a license for such software. Such license granted to such Existing IP shall not be construed as granting Customer a license to any SAS software, which must be separately licensed by DIR or Customer.

Notwithstanding the definition contained in Section 5(A)(1) hereof, with respect to any “Work Product” produced by Vendor, the parties further acknowledge and agree that such term shall only include reports, statistical analyses, work papers, specifications, or designs that are the output caused by operation of any licensed SAS software which result from any services rendered by EIS; provided, however, such

Work Product shall not include the Existing IP, including without limitation that part thereof that causes the SAS software system to create and display such output. Such Work Product as defined in the preceding sentence and copyright therein is the only work to be developed, or for which ownership purchased, under any resulting contract between Vendor and any Customer.

Each Customer shall own all right, title, and interest in and to its own Customer Materials. Each Customer grants to EIS a limited, nontransferable, nonexclusive, royalty-free license to use, and to allow SAS to use, any Customer Materials in connection with EIS' performance of any Services for a specific Customer. "Customer Materials" means (a) any Customer computer code, documentation or other materials developed by or for a Customer prior to performance of the services and (b) any Customer confidential information which is contained in any Work Product delivered to a Customer by EIS hereunder and any portion of any Work Product that discloses any such Customer Information, including, with respect to both items (a) and (b), all intellectual property rights therein.

The parties acknowledge and agree that this Section 5 shall only apply to the delivery of services hereunder and shall not apply to the license of any SAS software to any Customer. The parties further acknowledge and agree that: (i) subsection (I) of this Section 5 shall not refer to or include any SAS software, which must be separately licensed and the terms of which are not otherwise subject to this Section 5, and (ii) the third to last sentence of subsection (B) of this Section 5 shall not apply to Vendor.

B. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, B. Customer Discount, is hereby deleted in its entirety and replaced as follows:

The price to the Customer shall be the then-current GSA Contract Price. Vendor shall provide updates to DIR of any changes to the GSA Contract Price. The "GSA Contract Price" is defined as the product sales price available to Customers pursuant to the GSA Schedule held by Vendor.

C. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, is hereby deleted in its entirety and replaced as follows:

The minimum Customer discount for all products and services will be the GSA Contract Price in effect at the time of the order. Customer Price includes the DIR Administrative Fee.

D. Appendix A, Section 8. Pricing, Purchase Orders, Invoices and Payments, G. Changes to Prices, is hereby deleted in its entirety and replaced as follows:

Vendor may change the price of any Product or Service at any time, based upon changes to the applicable GSA Contract Price. GSA Contract Price decreases shall take effect automatically during the term of this Agreement for new Orders received on or after the date such decreases become effective pursuant to the GSA Schedule.

E. Appendix A, Section 10, Vendor Responsibilities, K. Limitation of Liability, is hereby deleted in its entirety and replaced as follows:

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, none of the parties shall be liable to the other for punitive, special, or consequential damages (arising in contract or tort), even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages relating to all matters covered by the Agreement or use of the Software, or any Work Product resulting from any services delivered hereunder, shall be limited to the greater of (i) \$1 million dollars or (ii) three times the license or service fees identified on the purchase order for the specific Software product(s), or services, at issue during the then-current license period. However, this limitation of Vendor's liability shall not apply to claims of bodily injury, or violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement.

F. Appendix A, Section 10, Vendor Responsibilities, N.1) Required Insurance Coverage, 1. , is hereby deleted in its entirety and replaced as follows:

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. Agencies may require additional Umbrella/Excess Liability insurance, provided such amount is mutually agreed upon by the parties. The policy shall contain the following provisions:

- a) Blanket 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;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

3. **Appendix C – Pricing Index** is hereby restated as attached hereto as Appendix C – Pricing index.

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 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.

EXECUTIVE INFORMATION SYSTEMS, LLC

Authorized By: Signature on File

Name: R. Patrick Krause

Title: Vice President

Date: 2-11-2015

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

Authorized By: Signature on File

Name: Dale Richardson

Title: Chief Operations Officer

Date: 2/27/15

**Office of
General Counsel:** DRBrown 2-25-15