

**Amendment Number 6**  
**to**  
**Contract Number DIR-TSO-2521**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**EXECUTIVE INFORMATION SYSTEMS, LLC**

This Amendment Number 6 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. **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 September 12, 2017, 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 7. Software License and Service Agreements, D. Conflicting or Additional Terms** is hereby restated in its entirety as follows:

**D. 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.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor’s initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer’s authorized signatory.

Vendor shall not [without prior written agreement from Customer’s authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional

costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

3. **Appendix A. Standard Terms and Conditions for Product and Related Services** is hereby restated in its entirety and replaced with the Attached Appendix A, Standard Terms and Conditions for Product and Related Services dated 06/21/16 except where previous authorized exceptions to Appendix A were allowed and documented as part of the Contract. In such cases, the previously authorized exceptions shall be applied to the portions of the new Appendix A which are comparable to those in the earlier Appendix A for which they were written, and this without regard for the numbering or lettering associated with any of the documents. Applied in such manner, the exceptions shall remain in full force and effect until such time the contract expires or is terminated.
4. **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 06/21/2016.
5. **Authorized Exceptions to Appendix A, Standard Terms and Conditions For Product and Related Service Contracts** dated 06/21/2016.

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

**M.** 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.

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

**B. Customer Discount**

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.

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

**C. Customer Price**

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.

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

**G. Changes to Prices**

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.

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

**K. Limitation of Liability**

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.

6. **Appendix A, Section 10, Vendor Responsibilities, N. Required Insurance Coverage, 1) Commercial General Liability** is hereby deleted in its entirety and replaced 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. 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.

All other terms and conditions of the Contract, 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 this Amendment Number 6, then 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 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 September 12, 2016.

**EXECUTIVE INFORMATION SYSTEMS, LLC**

**Authorized By:** Signature on File

**Name:** R. Patrick Krause

**Title:** Vice President

**Date:** 9/1/2016

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

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 9/12/2016

**Office of  
General Counsel:** DB 9/12/2016