

**AMENDMENT NUMBER 1
TO
CONTRACT NO. DIR-TSO-2558
BETWEEN
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES
AND
KPMG LLP**

This Amendment Number 1 to Contract Number DIR-TSO-2558 (“Contract”) is between the Department of Information Resources (“DIR”) and KPMG LLP (“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:

The term of this Contract is extended for one (1) year through May 14, 2016. If vendor has no sales for the one-year term, DIR will not extend or negotiate any extensions. The Contract will expire May 15, 2016. Prior to the expiration date of the term, DIR and Vendor may extend the Contract upon mutual agreement, for up to the remaining two (2) additional one-year terms.

2. **Contract, Section 4. Pricing**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Services Contracts, **Section 7. Pricing, Purchase Orders, Invoices, and Payments**.
3. **Contract, Section 8. Intellectual Property Matters**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Services Contracts, **Section 4. Intellectual Property Matters**.
4. **Contract, Sections 5 - 9** are hereby re-numbered **Sections 4 – 7**.
 - A. **Section 5. DIR Administrative Fee** is re-numbered as **Section 4. Administrative Fee**;
 - B. **Section 6. Notification** is re-numbered as **Section 5. Notification**;
 - C. **Section 7. Statement of Work, Service Agreement and Shrink/Click-wrap Agreements** is re-numbered as **Section 6. Statement of Work, Service Agreement and Shrink/Click-wrap Agreements**;
 - D. **Section 9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts** is re-numbered **Section 7. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**.

5. **Authorized Exceptions to Request for Offer DIR-SDD-TMP-199 for Cloud Services.**

Appendix A of the RFO, Item 20B, Certification Statement, (xvi) only is hereby restated in its entirety:

Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute a conflict of interest and certifies that it will not reasonably create the appearance of impropriety;

6. **Appendix A, Standard Terms and Conditions for Services Contracts dated 8/9/13,** is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Services Contracts dated 02/04/15,** as attached.

7. **Section 4, Intellectual Property, G. Return of Materials Pertaining to Work Product,** is hereby restated in its entirety:

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

THE FOREGOING NOTWITHSTANDING, Vendor may retain a copy of information received, developed, or otherwise relating to this Contract in order to comply with its contractual obligations and applicable professional standards. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return of records as contemplated by this paragraph.

8. **Section 9, Vendor Responsibilities, C. Vendor Certifications, (xii) only** is hereby restated in its entirety:

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they represent and warrant that the provision of goods and services or other performance under the Contract will not constitute a conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the

Contract, certify they shall disclose the conflict of interest and any circumstances that create the appearance of impropriety;

9. **Section 9, Vendor Responsibilities, H. Confidentiality**, is hereby restated in its entirety:

- 1) Vendor acknowledges that DIR and Customers are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner, provided that Vendor may disclose such information when required by law, legal process, or applicable professional standards, or in connection with its performance of the Contract.

10. **Section 9, Vendor Responsibilities, O. Required Insurance Coverage**, is hereby restated 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 rated by A.M. Best, licensed or authorized to do business in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. 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:

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. 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

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 minimum 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 contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

11. Section 10, Contract Enforcement, B. Termination, 3. Termination for Convenience, is hereby restated in its entirety:

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer may terminate a Purchase Order, in whole or in part, by giving Vendor thirty (30) days' notice.

12. Section 10, Contract Enforcement, B. Termination, 4. Termination for Cause, b) Purchase Order, is hereby restated in its entirety:

Customer or Vendor may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 9.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

13. Section 10, Contract Enforcement, C. Force Majeure, is hereby restated in its entirety:

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of

Force Majeure has prudently and promptly acted to take any and all reasonable steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

14. **Section 13, Management Decisions**, is hereby restated in its entirety:

DIR acknowledges and agrees that Vendor's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, DIR or Customer, as applicable. The Vendor will not perform management functions or make management decisions for DIR or the Customer.

15. **Section 14, Third Party Usage**, is hereby restated in its entirety:

The advice, recommendations, work product, and deliverables provided as part of this engagement will be developed for Client management. We disclaim any intention or obligation to update or revise the observations whether as a result of new information, future events or otherwise. Should additional documentation or other information become available which impacts upon the observations reached in our deliverables, we reserve the right to amend our observations and summary documents, including deliverables, accordingly.

16. **Section 15, Electronic Communications**, is hereby restated in its entirety:

Vendor may communicate with DIR or the Customer by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. DIR and the Customer accept the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). DIR and the Customer agree that the final hardcopy version of a document, including a deliverable, or other written communication that Vendor transmits to DIR or the Customer shall supersede any previous versions transmitted electronically by Vendor to DIR or the Customer unless no such hard copy is transmitted.

17. **Section 16, Active Spreadsheets and Electronic Files**, is hereby restated in its entirety:

Vendor may use models, electronic files, and spreadsheets with embedded macros created by Vendor to assist Vendor in providing the services under the Contract. If Customer requests a working copy of any such model, electronic file or spreadsheet, Vendor may, at its discretion, make such item available to DIR or the Customer for DIR's or the Customer's internal use only and such item shall be considered a deliverable (subject to

the requirements herein); provided that DIR and the Customer are responsible for obtaining the right to use any third-party products necessary to use or operate such item.

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 1 and then Contract DIR-TSO-2558.

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IN WITNESS WHEREOF, the parties hereby execute this Amendment Number 1 to be effective upon the date of the last signature but in all events, not later than May 14, 2016.

KPMG LLP

Authorized By: signature on file

Name: Charles Collier

Title: Managing Director

Date: 5/27/15

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: 6/5/15

Office of General Counsel: David Brown 6/2/15