

Amendment Number 2
to
Contract Number DIR-TSO-2567
between
State of Texas, acting by and through the Department of Information Resources
and
CGI TECHNOLOGIES AND SOLUTIONS, INC.

This Amendment Number 2 to Contract Number DIR-TSO-2567 (“Contract”) is between the Department of Information Resources (“DIR”) and CGI Technologies and Solutions, Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, 1. Introductions, C. Precedence** is hereby restated in its entirety as follows:

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Software License Agreement; Exhibit A, Proprietary Software License Agreement to Appendix D; Appendix E, Software Maintenance Agreement; Appendix F, Customer Services Agreement; Appendix G, Managed Services Agreement; Appendix H, Confidentiality Agreement; Appendix I, CGI Advantage360 Software as a Service Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-221, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-221, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Appendix G, then Appendix H, then Appendix I, then Exhibit 1 and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. **Contract, 7. Shrink/Click-wrap and Agreements, A. Software License Agreement** is hereby restated in its entirety as follows:

A. Software License Agreement

- 1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D. Customers acquiring software as a service shall access and use such software as a service subject to compliance with the CGI Advantage 360 Software as a Service Agreement set forth in Appendix I of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.

- 2) Compliance with the Software License Agreements is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Agreement terms and conditions.
3. **Contract, Section 7. Shrink/Click-wrap and Agreements, G. Conflicting or Additional Terms** is hereby restated in its entirety as follows:

G. 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.

4. **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.
5. **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.
6. **Authorized Exceptions to Appendix A, Standard Terms and Conditions For Product and Related Service Contracts** dated **06/21/2016**.

A. Appendix A, Section 3. Definitions, B. Compliance Check is hereby replaced in its entirety as follows:

B. Compliance Check – an audit of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees; provided, however, that DIR may not designate as a third party auditor any person that is identified by Vendor as a competitor of Vendor. Any third party auditor retained by DIR in connection with such audits will execute a non-disclosure agreement as attached hereto as Appendix H, Confidentiality Agreement.

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

F. Choice of aw

The laws of the State 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. Choice of laws and venue with respect to purchase orders and statements of work between Vendor and non-Texas Customers shall be as mutually agreed in the applicable purchase order or statement of work.

C. Appendix A, Section 5. Intellectual Property Matters, B. Ownership is hereby replaced in its entirety as follows:

B. Ownership.

Except as otherwise expressly provided in this Section 5.B, as between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that

the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. This Section 5.B shall not apply to project deliverables expressly agreed by Customer and Vendor to be incorporated in baseline licensed software (“Baselined Deliverables”). Such Baselined Deliverables are not Work Product within the meaning of this Section 5.B and shall be owned by Vendor and licensed to Customer as “Software” within the meaning of Appendix D, Proprietary Software License Agreement. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

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

C. Customer Price

3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under substantially similar terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price. This Section 8.C. (3) is not applicable to non-Texas entity Customers.

E. Appendix A, Section 9. Contract Administration, C. Records and Audit, 1) is hereby replaced in its entirety as follows:

C. Records and Audit

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor’s Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor’s Office

or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

F. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification 2) Acts or Omissions is hereby replaced in its entirety as follows:

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 TO THIRD PARTIES, OR THIRD PARTY ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES out of, or resulting from any negligent or intentional 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.

G. Appendix A, Section 10. Vendor Responsibilities, J. Background and/or Criminal History Investigation is hereby replaced in its entirety as follows:

J. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by CGI, which will certify the results of such investigations to certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

H. Appendix A, Section 10. Vendor Responsibilities, K. Limitation of Liability is hereby replaced in its entirety 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, even if it is advised of the possibility of such damages; and ii) unless otherwise expressly agreed by Customer and Vendor in the applicable Statement of Work, Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action; provided, however, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

I. Appendix A, Section 10. Vendor Responsibilities, N. Required Insurance Coverage, 1) Commercial General Liability is hereby replaced in its entirety 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) Vendor shall endeavor to provide 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.

J. Appendix A, Section 10. Vendor Responsibilities, N. Required Insurance Coverage, 3) Business Automobile Liability Insurance is hereby replaced in its entirety as follows:

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) Vendor shall endeavor to provide 30-day Notice of Termination; and
- c) Additional Insured.

7. **Appendix C – Pricing Index** is hereby restated by updating available products and deleting products as attached hereto as Appendix C – Pricing index.

8. **Appendix I – CGI Advantage 360 Software as a Service Agreement** is hereby added as attached hereto.

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, Amendment Number 1 and then the Contract.

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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 July 22, 2016.

CGI TECHNOLOGIES AND SOLUTIONS, INC.

Authorized By: Signature on File

Name: Michael Wendland

Title: Vice President, Consulting Services

Date: 7/22/2016

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

Authorized By: Signature on File

Name: Herschel Becker

Title: Chief Procurement Officer

Date: 7/26/2016

**Office of
General Counsel:** DB 7/26/2016