

AMENDMENT NUMBER 1
CONTRACT NO. DIR-TSO-2732
BETWEEN
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES
AND
PRICEWATERHOUSECOOPERS PUBLIC SECTOR LLP AS ASSIGNEE OF
PRICEWATERHOUSECOOPERS LLP

This Amendment Number 1 to Contract Number DIR-TSO-2732 (“Contract”) is between the Department of Information Resources (“DIR”), PricewaterhouseCoopers LLP (“Vendor”), and PricewaterhouseCoopers Public Sector LLP. The foregoing entities agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 1. Parties**, is hereby restated as follows:

A. Parties

- 1) This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and PricewaterhouseCoopers Public Sector LLP, a Delaware limited liability partnership and subsidiary of PricewaterhouseCoopers LLP with its principal place of business at 1800 Tysons Boulevard, 6th Floor, McLean VA 22102.
- 2) DIR acknowledges the assignment of the Contract; DIR shall change the contract documents hereafter to PricewaterhouseCoopers Public Sector LLP.
- 3) PricewaterhouseCoopers Public Sector LLP hereby agrees to perform all duties and obligations to be performed by Vendor under Contract DIR-TSO-2732 to the same extent as if it had been an original party thereto.
- 4) PricewaterhouseCoopers Public Sector LLP represents that it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate.
- 5) PricewaterhouseCoopers Public Sector LLP also represents that it is authorized to do business in the State of Texas and is in good standing with the Comptroller of Public Accounts.

2. **Contract, Section 2. Term of Contract**, is hereby amended as follows:

The term of this Contract is extended for one (1) year through November 5, 2016. If vendor has no sales for the one-year term, DIR will not extend or negotiate any extensions and the Contract will expire November 6, 2016. If the Vendor has sales and 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.

3. **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**.
4. **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**.
5. **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**.
6. **Contract Section 6. Statement of Work, Service Agreement and Shrink/Click-wrap Agreements**, is hereby restated:

Regardless of any other provision or other license or service terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the terms between Customers and Vendor, provided, however, that this section 6(B) only applies to the terms in shrink wrap and click-through agreements. **It is the Customer’s responsibility to read the Shrink/Click-wrap License/Service Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license/service terms, Customer shall be responsible for negotiating with the Vendor to obtain additional changes in the Shrink/Click-wrap Agreement language.**
7. **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 08/07/15**, as attached.
8. **Section 2. Definitions, H. Order Fulfiller**, is hereby restated:

H. Order Fulfiller – a vendor or contractor who is contracted with the Vendor to provide the product or services offered by the Vendor under this Contract on the Vendor’s behalf.

9. **Section 4. Intellectual Property Matters**, is hereby restated:

A. Definitions,

1. “Work Product” means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including, to the extent included in, or necessary to use, a deliverable in a Statement of Work, 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, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer’s benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. “Intellectual Property Rights” means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. “Statement of Work” means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4. “Third Party IP” means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

5. “Vendor IP” means Vendor’s working papers (as defined below), preexisting materials and any general skills, know-how, processes, or other intellectual property (including a

non-client specific version of any deliverables) which Vendor may have discovered or created as a result of performing services under this Contract. The Customer has a nonexclusive, non-transferable license to use such materials included in the deliverables. Working papers are those documents developed by the Vendor incident to the performance of Vendor's engagement which are a basis for, and in support of, a Deliverable or Work Product prepared by the Vendor under a SOW.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated either expressly in the Work Product or Deliverables by Vendor or such rights as may be necessary for Customer to be able to fully enjoy the Work Product and Deliverables. Except for the license in 8(A), Vendor shall retain full ownership rights in Vendor IP, and any restrictions set forth in Section 8(H) hereunder shall not apply to Vendor IP.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product, shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H ("Confidential Information"). Vendor shall disclose the Confidential Information only to its employees and/or personnel or the employees and/or personnel of its affiliates who have a need to know such information, and shall use the Confidential Information solely in furtherance of Vendor's services under this Contract. Except as set forth above, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer. Confidential Information shall not include information that: (a) is or becomes publicly available other than by a breach of this Contract by Vendor; (b) is acquired by Vendor from a third party that is not, to Vendor's knowledge, under any confidentiality obligation to the Client regarding such information; or (c) is known to Vendor prior to the date of this Contract, or that Vendor develops independently without use of the Confidential Information. Each party will protect the confidentiality of Confidential Information that it receives from the other party except as required by applicable law, statute, rule, or regulation.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that Customer may immediately seek injunction of any material breach of the intellectual property, use, and confidentiality provisions of this Contract.

G. Return of Materials Pertaining to Work Product.

Upon conclusion of the Contract, if requested by Customer in writing, Vendor shall surrender to Customer all Confidential Information; provided, however, Vendor may retain its working papers or Customer's Confidential Information as necessary to comply with applicable laws, rules, regulations and/or professional standards or guidelines to which a party conforms. Any copies of Customer's Confidential Information so kept shall be retained in confidence pursuant to the terms of this Contract.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

The parties agree that Vendor will not be providing any Third Party IP under this Contract. However, if and to the extent that any Vendor IP is embodied or reflected in the Work Product, or is necessary to provide the Services, Vendor hereby grants to the Customer, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the

Work Product, and (ii) authorize others to do any or all of the foregoing. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product.

J. Agreement with Subcontracts.

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.

K. Vendor Development Rights.

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. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

10. Section 5. Terms and Conditions Applicable to State Agency Purchases Only, is hereby restated:

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only),

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later thirty (30) days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

The parties acknowledge and agree that Vendor will not be providing any products subject to the Electronic and Information Resources Accessibility Standards under this Contract.

11. Section 5. Terms and Conditions Applicable to State Agency Purchases Only, B. Purchase of Commodity Items (Applicable to State Agency Purchases Only), is hereby restated:

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 8.L.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from Subsection 5B.

The parties understand that the sole commodity item being procured under this contract is Cloud Assessment services.

12. Section 7, Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, Subsection 3), is hereby restated:

If pricing for Cloud assessment services available under this Contract are provided by Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to Cloud assessment services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall not subcontract any of the work as a part of this Contract. This Contract shall be amended within ten (10) business days to reflect the lower price.

13. Section 8, Contract Administration, A. Contract Administrators, 2) Vendor Contract Administrator, is hereby restated:

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) to the extent required under the Contract, supporting the marketing and management of the Contract, ii) facilitating dispute resolution between Vendor and a Customer, and iii) advising DIR of Vendor's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

14. Section 8, Contract Administration, B. Reporting and Administration, 5) Accurate and Timely Submission of Reports, c), is hereby restated in its entirety:

Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

15. Section 9. Vendor Responsibilities, A. Indemnification, is hereby restated:

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING OF PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

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 THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS FOR PERSONAL 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.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES (FOR PURPOSES OF THIS PROVISION, "STATE") from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. No such indemnification shall apply to claims arising solely from the State's misuse or modification of Vendor's services or deliverables; the State's failure to use correction or enhancements made available by Vendor; the State's use of

such services or deliverables in combination with any product, materials or information not provided by Vendor; or information, material or specifications provided by or on behalf of the State.

b) 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.

16. Section 9. Vendor Responsibilities, C. Vendor Certifications, item (vii), is hereby restated:

(vii) Vendor and its principals that are performing services under this Contract are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

17. Section 9. Vendor Responsibilities, C. Vendor Certifications, item (xvi), is hereby restated:

(xiii) Vendor represents and warrants the provision of goods and services or other performance by Vendor under the Contract will not constitute a conflict of interest. "Conflict of Interest" is defined as those situations wherein such personnel are unable to render impartial assistance, advice, or services to DIR.

18. Section 9. Vendor Responsibilities, C. Vendor Certifications, item (xiii), is hereby restated:

(xiii) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas; The parties agree, however, that Vendor will not be providing any products or materials under this Contract.

19. Section 9. Vendor Responsibilities, C. Vendor Certifications, item (xv), is hereby restated:

(xv) Vendor represents and warrants that the Customer's payment and receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code, the foregoing statutes relate to restrictions on lobbying expenditures and compensation; Vendor is not providing lobbying to Customer under this Contract, nor otherwise under this Contract seeking to influence passage or defeat any legislation.

20. Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel, is hereby restated:

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 preserve the safety, security, and the integrity of the personnel, premises,

equipment, and other tangible property of the Customer, in accordance with the Customer security requirements provided to Vendor in advance or onsite. Vendor shall preserve the safety, security and integrity of the Customer Data, with the understanding that Customer is responsible for its own data backup for any Data provided to Vendor. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiler fails to comply with Customer's security requirements under this section, then Customer may immediately terminate its Purchase Order and related Service Agreement.

21. Section 9. Vendor Responsibilities, J. Background and/or Criminal History Investigation, is hereby restated:

To the extent agreed upon by the parties for a particular statement of work, prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor 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.

22. Section 9. Vendor Responsibilities, K. Limitation of Liability, is hereby replaced in its entirety:

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 of Texas, 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) Vendor's aggregate liability for damages of any kind under the Contract other than for claims for third party patent, trademark or copyright infringement ("IP Claims") shall be limited to the lesser of: (A) thirty-six times the average monthly amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action; or (B) \$20,000,000. Vendor's aggregate liability under the Contract for IP Claims shall not exceed \$15,000,000. CUSTOMERS SHOULD EVALUATE THEIR RISK FOR EACH PURCHASE: IF NEEDED, CUSTOMERS MAY NEGOTIATE HIGHER LIMITATIONS OF LIABILITY.

23. Section 9. Vendor Responsibilities, M. Prohibited Conduct, is hereby restated:

Vendor represents and warrants that, as of the date of this certification, neither Vendor's employees performing services under this Contract, nor any subcontractor employees performing services under this Contract, have: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated Vendor's response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

24. Section 9. Vendor Responsibilities, O. Required Insurance Coverage, is hereby restated:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 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- financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. 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 of \$2,000,000. 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 listed as an additional insured; and
- d) 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 third party 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 in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and,
- b) Additional Insured.

25. Section 9. Vendor Responsibilities, S. Secure Erasure of Hard Disk Managed Services Products and/or Services, is hereby restated:

Vendor agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the

managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC 202.

The parties understand and agree that Vendor will not be providing any managed service products and/or services equipped with hard disk drives under this Contract.

26. Section 9. Vendor Responsibilities, T. Deceptive Trade Practices, paragraph b) only, is hereby restated:

b) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

27. NEW Section 9. Vendor Responsibilities, X. Performance Standards, (previously Section W.) is hereby restated:

Vendor will perform the Services in accordance with the Standard for Consulting Services established by the American Institute of Certified Public Accountants. Accordingly, Vendor will not provide an audit or attest opinion or other form of assurance, and Vendor will not verify or audit any information provided to Vendor.

28. Section 10. Contract Enforcement, new paragraph 7) only, is hereby restated:

If Customer terminates for convenience, Vendor shall be compensated by Customer for all services performed in accordance with the terms of the Contract by Vendor prior to the date of notice of termination, subject to the availability of appropriated funds.

29. Section 10. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order, is hereby restated:

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.

30. Section 10. Contract Enforcement, C. Force Majeure, is hereby restated:

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, or other cause beyond the reasonable control of the non-performing party, but not including the acts or omissions of any contractor, subcontractor or supplier of Vendor provided that the party experiencing the event of Force

Majeure has prudently and promptly acted to take any and all 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. 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.

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 1 and then Contract DIR-TSO-2732.

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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 November 5, 2015.

PricewaterhouseCoopers LLP

Authorized By: signature on file

Name: Lawrence M. Hanrahan

Title: Principal

Date: 2/19/16

PricewaterhouseCoopers Public Sector LLP

Authorized By: signature on file

Name: Christopher O'Brien

Title: Principal

Date: 2/19/16

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: 2/25/16

Office of General Counsel: D Brown 2/24/16