

Amendment Number 1
to
Contract Number DIR-TSO-3150
between
State of Texas, acting by and through the Department of Information Resources
and
IMMIXTECHNOLOGY, INC.

This Amendment Number 1 to Contract Number DIR-TSO-3150 (“Contract”) is between the Department of Information Resources (“DIR”) and IMMIXTECHNOLOGY, INC. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 3. Product and Service Offerings** is hereby restated in its entirety as follows:

A. Products

Products available under this Contract are limited to Software Products, including Software as a Service Products, as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of the RFO and products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer’s product line which was not included in the Vendor’s response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Software Services, including Software as a Service Product Services, as specified in the RFO and Appendix C, Pricing Index. Vendor may incorporate changes to their service offerings; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

2. **Contract, Section 7. Software License and Service Agreements** is hereby restated in its entirety as follows:

A. License Subscription and Services Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the License Subscription and Services Agreement set forth in Appendix D of this Contract. No changes to the License Subscription and Services 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 Fulfiler shall make the License Subscription and Services Agreement terms and conditions available to all Customers at all times.

2) Compliance with the License Subscription and Services Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer’s compliance with the License Subscription and Services Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its

compliance with the License Subscription and Services Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license 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 license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

C. Service Agreement

Services provided under this Contract shall be in accordance with the License Subscription and Services Agreement as set forth in Appendix D of this Contract. No changes to the License Subscription and Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

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 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 09/24/2015.

4. **Contract, Section 8. Authorized Exceptions to Contract or any Appendices**, is hereby restated in its entirety as follows:

A. Appendix A, Section 5, Intellectual Property Matters is hereby restated in its entirety as follows:

This Contract does not contemplate, authorize, or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such products or services, the Parties must use a separate contract.

B. Appendix A, Section 8.A, Manufacturer's Suggested Retail Price (MSRP) or List Price is hereby restated in its entirety as follows:

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable. Notwithstanding the foregoing, the MSRP or List Price for products provided under Contractor's General Services Administration (GSA) IT 70 Schedule Contract GS-35F-0265X and GS-35F-0511T shall be based on the prices published by GSA and Contractor.

C. Appendix A, Section 8.G, Change to Prices is hereby restated in its entirety as follows:

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP or Contractor's GSA IT70 Schedule Contract GS-35F-0265X and GS-35F-0511T, but discount levels shall remain consistent with the discount levels specified in this Contract.

1) Price increase or decrease change requests must be requested with a signed cover letter indicating the change in price. Price increase requests must be accompanied by a copy of the manufacturer or publisher's price list.

2) Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

3) Requests for price increases will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Increases that are not accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted increase is rejected, Vendor may request that the product or service rejected be removed from the Contract. The product or service will be removed from the Contract upon execution of a written Contract amendment, which shall be transmitted to Vendor by DIR within thirty (30) calendar days after receipt of the written request to remove the product or service and executed by both parties without undue delay. Existing pricing must be honored up to the date of execution of the Contract amendment. Prices may not be increased for at least ninety (90) calendar days after the contract start date. Price reductions will be accepted at any time.

5. **Appendix C, Pricing Index** is hereby restated in its entirety 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 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 February 15, 2016.

IMMIXTCHNOLOGY, INC.

Authorized By: Signature on File

Name: David Stewart

Title: Vice President

Date: 2-2-2016

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

Authorized By: Signature on File

Name: Dale Richardson

Title: Chief Operating Officer

Date: 2-4-2016

General Counsel: D. Brown, 2-4-2016