

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR PRODUCTS AND RELATED SERVICES

BENCHLY, INC.

1. Introduction

A. Parties

This Contract for products and related 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 Benchly, Inc. (hereinafter “Vendor”), with its principal place of business at 1773 Westborough Dr., Suite 400, Katy, Texas 77449.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-CPO-TMP-449, on March 10, 2020, for Software Solutions and Augmenting RFO DIR-TSO-TMP-416. Upon execution of all RFO awarded Contracts, a notice of award for DIR-CPO-TMP-449 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows:

- 1) this Contract;
- 2) Appendix A, Standard Terms and Conditions For Products and Related Services Contracts;
- 3) Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan;
- 4) Appendix C, Pricing Index;
- 5) Appendix D, Customer Service Agreement;
- 6) Exhibit 1, Vendor’s Response to RFO DIR-CPO-TMP-449, including all Addenda; and
- 7) Exhibit 2, RFO DIR-CPO-TMP-449, including all Addenda;

are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. 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 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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. Term of Contract

The initial term of this Contract shall be two (2) years commencing on the later of November 16, 2020, or the last date of approval by DIR and Vendor and ending on November 15, 2022, with two (2) one (1) year renewals thereafter. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Software Solutions, including commercially available off-the-shelf (COTS) software products, software as a service, and enterprise resource planning (ERP) supplemental modules and 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 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 Solutions Services, which include but is not limited to installation, configuration, training, maintenance, support, licensing compliance services, and license management services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

C. Emerging Technologies and Future Acquisitions

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for services that are within the scope of Software Products, Software as a Service, Software Services. Vendor may propose such services throughout the term of the contract. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR's sole discretion and any decision will be final. In addition, Texas DIR and Vendor may mutually agree to add future acquisitions of Vendor to the contract. Subsequent terms of the acquisition(s) and pricing will be mutually agreed upon in writing and amended under the contract.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A. Fee Paid by Vendor to DIR

The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-fourth of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B. Price Quote

All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Hershel Becker or Successor in Office
Chief Procurement Officer
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700

If sent to the Vendor:

Haydn Jones
Benchly, Inc.
1773 Westborough Dr.
Suite 400 Katy, Texas 77449
Phone: (956) 543-6434
Email: hjones@benchly.com

7. Software License and Service Agreements

A. 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.**

B. Service Agreement

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

C. Conflicting or Additional Terms

- 1) 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.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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 of Publisher.

- 8. Minimum Technical and Functional Requirements for Software as a Service (SaaS) Solutions**
- A. Any data hosted off site shall be accessible ninety-nine-point five percent (99.5%) of the time, including all planned and unplanned downtime. Planned downtime must be coordinated.**
 - B. All data is shall be backed up every twenty-four (24) hours at Vendor’s site. Vendor shall provide remote back-up of Customer information.**
 - C. The Vendor shall involve and inform the Customer of any operational changes that may affect access to the data, prior to the implementation of such changes. That includes but is not limited to:**
 - 1) Migration, upgrades, or other changes to the server that require downtime, or a server reboot must be coordinated at least ten (10) business days in advance. Security patches and other emergency requirements can be coordinated with less notice, but a designated Customer representative must be contacted prior to rebooting the server.
 - 2) A designated Customer representative must be notified within thirty (30) minutes of an unplanned outage and must be given an estimated recovery time or hourly status updates until the recovery time is known.
 - D. The Vendor shall return any Customer data to the Customer upon written request.**
 - E. Vendor data protection controls shall comply with the requirements of Texas Administrative Code § 202, Information Security. Customers have the capability to ensure compliance through audit of the environment.**
- 9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

No exceptions have been agreed to by DIR and Vendor.

This Contract is executed to be effective as of the date of last signature.

VENDOR NAME: Benchly, Inc.

Authorized By: Signature on File

Name: Zane Russell

Title: Chief Executive Officer

Date: 1/20/2021

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: 1/22/2021

Office of General Counsel: M.H. Signature on File **Date:** 1/21/2021