

Amendment Number 6
to
Contract Number DIR-TSO-3373
between
State of Texas, acting by and through the Department of Information Resources
and
Microsoft Corporation

This Amendment Number 6 to **Contract** Number **DIR-TSO-3373** (“**Contract**”) is between the Department of Information Resources (“**DIR**”) and Microsoft Corporation (“**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:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through December 10, 2018, or until terminated pursuant to the termination clauses contained in the Contract. The contract will renew automatically in one -year increments for one (1) additional year 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 term or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. **Contract, Section 6, Notification**, is hereby restated in its entirety as follows:

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

If sent to the State:

Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Phone: 512-475-4700
Facsimile: 512-475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Todd Minor
Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052
Phone: (425) 421-0494 ext. 10494
Email: toddmin@microsoft.com

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

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. 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 of Publisher.

4. **Appendix A, Standard Terms and Conditions for Product and Related Services Contracts dated 06/21/2016**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Product and Related Services Contracts dated 09/29/2017**, as attached.
5. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts**, previously authorized exceptions are hereby amended as follows:

A. Appendix A, Section 5, Intellectual Property Matters is hereby deleted and replaced 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 product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

B. Appendix A, Section 9, Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, b), is hereby restated in its entirety as follows:

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section. Vendor and DIR will mutually select and agree on the auditor. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

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

1) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract and Purchase Orders placed by Customer or the State, as applicable, to the extent and in such detail as such records shall adequately reflect performance and administration of payments and fees hereunder, until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part

number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

D. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 4) PROPERTY DAMAGE, is hereby restated in its entirety as follows:

4) PROPERTY DAMAGE

TO THE EXTENT ANY LOSS, DAMAGE, OR DESTRUCTION OF ANY TANGIBLE PROPERTY OF CUSTOMER OR THE STATE IS CAUSED BY THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS "PROPERTY DAMAGE CLAIMS", THE VENDOR SHALL PAY COMMERCIALY REASONABLE THIRD PARTY COSTS OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. (IN ADDITION TO COSTS OF PRIVATE CONTRACTORS OR SUPPLIERS, REPAIR OR REPLACEMENT COSTS OF A GOVERNMENTAL ENTITY EMPLOYED TO PERFORM SUCH SHALL MEET THE DEFINITION OF "THIRD PARTY COSTS.") SUCH COSTS SHALL BE ACCURATELY DOCUMENTED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF AND REQUIRED DOCUMENTATION FOR THE AMOUNT DUE. THE FOREGOING SHALL CONSTITUTE CUSTOMER'S, OR STATE'S, AS APPLICABLE, SOLE AND EXCLUSIVE REMEDY FOR SUCH PROPERTY DAMAGE CLAIMS.

E. Appendix A, Section 10. Vendor Responsibilities, C. Vendor Certifications, is hereby restated and amended as follows:

C. Vendor Certifications

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

(ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441. Notwithstanding the foregoing, the parties acknowledge that this Contract does not contemplate custom-made products or goods but rather Vendor will provide all products and goods to be purchased hereunder from its commercially available inventory in the normal course of business;

(xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract. Notwithstanding the foregoing, the parties acknowledge that this Contract does not contemplate custom-made products or goods but rather Vendor will provide all products

and goods to be purchased hereunder from its commercially available inventory in the normal course of business; and

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

Customer may, at its sole expense, request that any Vendor employee, undergo a criminal background check (“Customer Owned Check”) administered by Customer or Customer’s vendor, prior to the employee’s entry on Customer’s premises, or prior to obtaining badge or systems access provided Customer (i) acknowledges that consent to such background check is entirely voluntary on the part of Vendor’s employee(s), and (ii) agrees to obtain the consent of such employee prior to performing a Customer Owned Check. Should a Vendor employee, choose not to consent to such a Customer Owned Check, Customer may, at its option, refuse or withdraw that employee’s permission to enter Customer’s premises or to access Customer’s systems. Customer Owned Checks that Customer or its subcontractors or agents perform will be job-related only and conducted in accordance with the Fair Credit Reporting Act and other applicable laws and regulations. DIR and Customer agrees (x) to use the results of any such Customer Owned Check only in connection with Customer’s decision whether to permit the Vendor employee to enter or remain on Customer property, or to access Customer’s systems; (y) to not disclose the result of such Customer Owned Check to Vendor or any third party, except as required by law; and (z) to not share the contents or provide Vendor or any third party with any copy of the consumer report generated by the Customer Owned Check of any Vendor employee(s), except as required by law. If, as a result of a Customer Owned Check, Customer refuses or withdraws Vendor’s employee(s)’ permission to enter or remain on Customer property, or to access Customer’s systems, Vendor shall promptly replace such employee on the Customer project in question.

G. Appendix A, Section 10, Vendor Responsibilities, N. Required Insurance Coverage is hereby restated in its entirety as follows:

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. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. Vendor may, at its option, meet the contractual insurance requirements via commercial insurance, self-insurance, alternative risk financing techniques, or a combination of these options. 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; and
- c) 30-day Notice of Termination 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) 30-day Notice of Termination

H. Appendix A, Section 10, Vendor Responsibilities, P. Immigration is hereby restated in its entirety as follows:

The Vendor and all of its subcontractors performing work related to this contract shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

I. Appendix A, Section 11. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order, is hereby restated and amended as follows:

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.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. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

6. **Appendix C – Pricing Index** is hereby restated in its entirety and replaced with Appendix C - Pricing Index 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 6, then Amendment Number 5, then Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then 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 December 10, 2017.

Microsoft Corporation

Authorized By: Signature on file

Name: Gavin Sessions

Title: Buyer

Date: 12/20/2017

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: 12/22/2017

Office of General Counsel: David Brown 12/22/2017