

Amendment Number 1
to
Contract Number DIR-TSO-4002
between
State of Texas, acting by and through the Department of Information Resources
and
PricewaterhouseCoopers Public Sector LLP

This Amendment Number 1 to **Contract** Number **DIR-TSO-4002** ("**Contract**") is between the Department of Information Resources ("**DIR**") and PricewaterhouseCoopers Public Sector LLP ("**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:

The term of this Contract shall be two (2) years commencing on September 9, 2017. Prior to expiration of the original term, the contract will renew automatically in one-year increments for two additional years 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.

2. **Contract, Section 3, Service Offerings**, is hereby amended as follows:

Services available under this Contract are limited to the Deliverables-Based Information Technology Services Technology Categories as specified below. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

No hardware or software products and related services may be sold through this contract. Any products needed to deliver final services must be procured through another contract vehicle. Examples of these products include: Software as a Service (SaaS), subscriptions, annual license maintenance and support, and web hosting.

Application Maintenance and Support

- 1) Definition: Application Maintenance and Support includes the skills and requirements for supporting application systems, including troubleshooting, modifying, maintaining and enhancing legacy systems. Application Maintenance and Support also applies to applications running in a production environment.
- 2) Examples of included services: research, analysis, design, programming, testing, documenting and implementing maintenance changes; correcting software errors; modifying reports and ensuring accurate report runs; making modifications to the applications and documentation; writing ad hoc queries; loading and applying changes

to the software language and/or database in which the application is written; providing corrections for production or any changes needed and participation in disaster recovery testing, planning and documentation. Services may need to be available 24/7 or on an on-call basis.

Business Intelligence (BI) and Data Warehouse

- 1) Definition: BI enables an organization to perform in-depth analysis and includes, where required, data mining of detailed business data providing real and significant information to business users. BI may include an integrated group of operational and decision support applications and databases. BI makes use of tools designed to easily access data warehouse data. A data warehouse collects, organizes and makes data available for the purpose of analysis and gives organizations the ability to access and analyze information about its business. The function of the data warehouse is to consolidate and reconcile information from across disparate business units and IT systems and provide a context for reporting and analysis.
- 2) Examples of included services: architectural design, extraction, transformation and loading of data sources; planning, assessment, product installation and tuning; prototype development, deployment, data cleansing, data mart development and support; data migration, integration with data mining; integration with business intelligence tools and/or systems; data scrubbing; data transformation; training and knowledge transfer.

Enterprise Resource Planning (ERP)

- 1) Definition: ERP is an amalgamation of an organization's information systems designed to automate and integrate a variety of functions, commonly referred to as "back office", including financials, human resources and asset management. These systems are modularized and generally highly configurable.
- 2) Examples of included services: planning and assessment; requirements development; business process reengineering (BPR); implementation and conversion services; application programming and support services; database administration, system software administration and support; functional support; and training support.

Information Technology Project Management

- 1) Definition: Project Management service providers may perform any or all of the project management processes identified by the Project Management Institute as published in the PMBOK® Guide, Fifth Edition or most recent.
- 2) Examples of included services: utilizing the Customer's tools and processes, using off-the-shelf tools, using Vendor's own proprietary tools and processes to manage a project and using the Texas Project Delivery Framework. Information about the framework tool can be found at the following url:
<http://www.dir.texas.gov/management/projectdelivery/projectframework/pages/framework.aspx>

Technology Upgrade/Migration and Transformation

- 1) Definition: Technology Upgrade/Migration may be required to increase business functionality, reengineer a business function, keep current with vendor upgrades or when upgrading existing technology. Technology Transformation may be accomplished by converting/migrating legacy applications to new technology either with or without new business functionality or it may include introducing new technology into the enterprise. Technology Upgrade/Migration may also include providing website content accessibility compliance.
- 2) Examples of included services: assessments of the current application portfolio, evaluation of the technology assets before beginning technology transformation and Business Case development for justification of an initiative. Also included are: technology transformations, which may include, appropriate Return on Investment (ROI), benchmarks and milestones. The following activities may also be included: planning, analysis, requirements development, proof of concept, deployment, implementation, integration, remediation, data migration, documentation, application programming and support services; and training support.

Information Technology Assessments and Planning

- 1) Definition: IT Assessments and Planning may include IT effectiveness, maturity, governance, project management and architecture. Strategic planning activities may include mission statement development, visioning and goals, objectives, and strategy development. Tactical planning may require that actionable plans and roadmaps be provided.
- 2) Examples of included services: IT assessments, including enterprise architecture and cloud assessments; staff knowledge, skills and abilities (KSAs) assessments; bandwidth assessments, network performance and strategic and tactical planning.

Application Development

- 1) Definition: Application Development is the development of new applications which may be mainframe, server, network-based, web-based or a combination. The requirements for new applications may require interfaces to existing applications.
- 2) Examples of included services: web application development; mobile application development; service oriented architecture (SOA); researching; analyzing; gathering requirements; designing; programming; testing; documenting and implementing; applying changes to the software language and/or database in which the application is written; providing corrections for production or any changes needed and participation in disaster recovery planning and documentation.

Independent Verification and Validation (IV&V)

- 1) Definition: Verification and Validation are independent procedures that are used together for in-depth analysis by checking that a product, service, or system meets requirements, independent oversight of SDLC processes and specifications and that it fulfills its intended purpose.

- 2) Examples of included services: Validation of software design to meet system needs/requirements; traceability of safety critical requirements; design analysis of selected critical algorithms; and code analysis of mission-critical software components and the independent oversight and assessment of systems development life cycle (SDLC) processes (such as issue and risk management, requirements analysis, testing, data conversion etc.)

Information Technology Procurement Assistance

- 1) Definition: Information Technology Procurement Assistance services may include assistance in IT Statement of Work (SOW) and/or Request for Offer (RFO) development. Procurement assistance activities may include requirements gathering, scoring criteria development, and evaluation criteria development.
- 2) Examples of included services: specification development, Statement of Work (SOW) development, and RFO development for IT products and services.

Note: Under Texas Government Code, § 2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The selected Vendor and the employees of that Vendor who perform IT Procurement Assistance Services will be ineligible to respond to any resulting solicitation(s).

3. **Appendix A, Standard Terms and Conditions for DBITS Services Contracts**, is hereby restated in its entirety and replaced with the attached Appendix A. Standard Terms and Conditions for DBITS Services Contracts dated **01/08/2018**, 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.
4. **Previously Authorized Exceptions to Contract and any Appendices.**
 - A. **Appendix A, Section 4. Intellectual Property Matters, B. Ownership**, is hereby replaced in its entirety as follows:

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 4(K), Vendor shall retain full ownership rights in Vendor IP, and any restrictions set forth in Section 4(H) hereunder shall not apply to Vendor IP.

- B. **Appendix A, Section 4. Intellectual Property Matters, E. Confidentiality**, is hereby replaced in its entirety as follows:

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 subparagraph H. 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.

- C. **Appendix A, Section 4. Intellectual Property Matters, G. Return of Materials Pertaining to Work Product**, is hereby replaced in its entirety as follows:

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 subject to Vendor's AICPA standards when applicable 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.

- D. **Appendix A, Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel**, is hereby replaced in its entirety as follows:

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 Fulfiller fails to comply with Customer's

security requirements under this section, then Customer may immediately terminate its Purchase Order and related Service Agreement.

- E. **Appendix A, Section 9. Vendor Responsibilities, J. Background and/or Criminal History Investigation**, is hereby replaced in its entirety as follows:

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.

- F. **Appendix A, Section 9. Vendor Responsibilities, K. Limitation of Liability**, is hereby replaced in its entirety as follows:

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.

- G. **Appendix A, Section 9. Vendor Responsibilities, N. Required Insurance Coverage**, is hereby replaced in its entirety as follows:

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 Subrogation

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 PER ACCIDENT, \$1,000,000 DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

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. The policy shall contain the following in favor of DIR and/or Customer:

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

All other terms and conditions of the **Contract** not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 1 and then the Contract.

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

PricewaterhouseCoopers Public Sector LLP

Authorized By: Signature on File

Name: Todd Hoffman

Title: Principal

Date: 5/10/2018

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: 5/10/2018

Office of General Counsel: Signature on File 5/10/2018