

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

INDIGO BEAM, L.L.C.

1. Introduction

A. Parties

This Contract for Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Indigo Beam, L.L.C. (“Vendor”), with its principal place of business at 10375 Richmond Ave., Suite 850, Houston, Texas 77042.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-253, on August 4, 2016, for Deliverables-Based Information Technology Services (DBITS). Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-253 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Deliverables-Based Information Technology Services Contract Terms and Conditions; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Sample Statement of Work; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-253, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-253, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. 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 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. 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.

3. **Service Offerings**

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.

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.

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>

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.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in the Customer’s Statement of Work and shall include the DIR Administrative Fee. Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer’s Statement of Work.

5. DIR Administrative Fee

A) 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-quarters 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) 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:

Kelly A. Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4000
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Jim McConn
Indigo Beam, L.L.C.
10375 Richmond Ave., Suite 850
Houston, Texas 77042
Phone: (713) 335-1560
Facsimile: (713) 456-2801
Email: Jim.mcconn@indigobeam.com

7. Statement of Work

A) Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix C of this Contract. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the SOW terms and conditions do not conflict with this Contract.

B) Conflicting or Additional Terms

In the event that conflicting or additional terms in Statement of Work 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.

- 8. Authorized Exceptions to Contract and any Appendices.**
No exceptions have been agreed to by DIR and Vendor.

(Remainder of page intentionally left blank)

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

Indigo Beam, L.L.C.

Authorized By: Signature on File

Name: Adarsh Karia

Title: Managing Partner

Date: 1/22/2018 | 2:02 PM CST

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: 2/8/2018 | 4:31 PM CST

Office of General Counsel:

DB 2/7/2018 | 9:44 AM CST