

**AMENDMENT NUMBER 2
TO
CONTRACT NUMBER DIR-SDD-2510
BETWEEN
STATE OF TEXAS, ACTING BY AND THROUGH THE DEPARTMENT OF
INFORMATION RESOURCES
AND
KPMG LLP**

This Amendment Number 2 to Contract Number DIR-SDD-2510 (“Contract”) is between the Department of Information Resources (“DIR”) and KPMG 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:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through September 3, 2016 or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for one (1) additional one-year term.

2. **Contract, Section 3. Service Offerings**, is hereby restated in its entirety 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 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.

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 Table 3-45 of the PMBOK® Guide, Third Edition or most recent.
- 2) Examples of included services: utilizing the Customer’s tools and processes, using off-the-shelf tools or using Vendor’s own proprietary tools and processes to manage a project.

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; staff knowledge, skills and abilities (KSAs) assessments; and strategic and tactical planning.

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 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.
3. **Contract, Section 4. Pricing**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts, **Section 7. Pricing, Purchase Orders, Invoices and Payments**.

4. **Contract, Section 5. DIR Administrative Fee**, is hereby re-numbered as **Section 4. Administrative Fee AND** is hereby restated in its entirety as follows:

4. 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. The effective date of this change was October 1, 2013.

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 in the price to the Customer.

5. **Contract, Section 9. Intellectual Property Matters**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts, **Section 4. Intellectual Property Matters**.
6. **Contract, Sections 6 - 10** are hereby re-numbered **Sections 5 – 8**, as follows:
- A. Section 6. Notification is re-numbered as **Section 5. Notification**;
 - B. Section 7. Statement of Work is re-numbered as **Section 6. Statement of Work**;
 - C. Section 8. Customer Satisfaction Metrics is re-numbered as **Section 7. Customer Satisfaction Metrics**;
 - D. Section 10. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts is re-numbered **Section 8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**.
7. **Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts dated 12/16/12**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts dated 07/21/15**, as attached.
8. **Appendix A, Section 4. Intellectual Property Matters, B. Ownership**, is hereby restated 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. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and

that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Customer shall have access to computer files pertaining to the "Work Product". Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor. Vendor is authorized to maintain copies of all information required by its contractual obligations or applicable professional standards. This retaining does not authorize Vendor to use the information so retained.

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

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

Vendor is authorized to maintain copies of all information required by its contractual obligations or applicable professional standards. This retaining does not authorize Vendor to use the information so retained.

10. Appendix A, Section 4. Intellectual Property Matters, K. License to Customer, is hereby restated in its entirety as follows:

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license

includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

Any advice, recommendations, information, deliverables or other work product provided to the State by the Vendor under this Contract is for the sole use of the Customer, and is not intended to be, and may not be, relied upon by any third party.

11. **Appendix A, Section 6. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, 1) Vendor Website**, is hereby restated in its entirety as follows:

1) Vendor Website

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a website specific to the service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the services offered, service specifications, contact information for Vendor, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph D of this Section, and contain a link to the DIR website for the Contract.

12. **Appendix A, Section 9. Vendor Responsibilities, T. Secure Erasure of Hard Disk Managed Services Products and/or Services**

Vendor agrees that all managed service products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC 202. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Vendor must certify, in a form acceptable to Customer, such destruction.

13. **Appendix A, Section 9. Vendor Responsibilities, W. State Ownership of Work Product**, is hereby restated in its entirety as follows:

Vendor and Customer acknowledge and agree that any and all analyses, evaluations, reports, memoranda, letters, ideas, processes, methods, programs, and manuals that were developed, prepared, conceived, made or suggested by the Vendor for any DIR Customer pursuant to a SOW, including all such developments as are originated or conceived

during the term of this Contract but are completed or reduced to writing thereafter (the "Work Product") will be and remain the exclusive property of DIR's Customer. For those DIR Customers without statutory authority to own such work product, DIR shall do so on their behalf. All rights, title and ownership interests, including copyright, which Vendor and all Workers may have in any Work Product or any tangible media embodying such Work Product are hereby assigned to DIR's Customer or, in those cases where the Customer does not have the authority, to DIR. Vendor, for itself and on behalf of its Workers, waives any property interest in such work product.

The Vendor is authorized to maintain copies of all information as required by its contractual obligations or applicable professional standards. This retaining does not authorize Vendor to use the information so retained.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. DIR retains the right to require further amendment to the Contract to update its terms and conditions as may be reasonable, necessary or required. In the event of conflict among the provisions, the order of precedence shall be this 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 September 3, 2015.

KPMG LLP

Authorized By: /Signature on File/

Name: Charles Collier

Title: Managing Director

Date: 08/13/15

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

Authorized By: /Signature on File/

Name: Sally Ward for Dale Richardson

Title: Chief Operations Officer

Date: 08/21/15

Legal: /Signature on File/ 08/20/15