

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

Executive Information Systems, LLC

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 Executive Information Systems, LLC (hereinafter "Vendor"), with its principal place of business at 6901 Rockledge Drive, Suite 600, Bethesda, Maryland 20817.

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-TSO-TMP-416, on 2/26/2018, for Software Products, Software as a Service, and Enterprise Resource Planning Software Modules Products and Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-416 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: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Software Product Terms; Appendix E, EIS License Attachment; Appendix F, Remote Managed Software and Services; Appendix G, Hosting Services; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-416, including all addenda; and Exhibit 2, DIR-TSO-TMP-416, 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 related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, Appendix G, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 last date of approval by DIR and Vendor, with two (2) optional two-year renewals. 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

Vendor Contract No. _____

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 Products and Related Services 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 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 products and services that are within the scope the solicitation described in Section 1.B above. Vendor may propose such products and 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) 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 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) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Chris DeLauter
Executive Information Systems, LLC
6901 Rockledge Drive, Suite 600
Bethesda, MD 20817
Phone: (301) 581-1085
Email: ddelauter@execinfosys.com

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D and Appendix E of this Contract. No changes to the terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D or Appendix E; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Agreements, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfiller shall make the Agreements terms and conditions available to all Customers at all times.

2) Compliance with the Agreements is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Agreements. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Agreements terms and conditions.

B. 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**

Vendor Contract No. _____

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.

C. Service Agreement

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

D. 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.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. Appendix A, Section 3.A. Definitions, is hereby amended as follows:

Customer - any Texas state agency, unit of local government, the Lower Colorado River Authority a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.

B. Appendix A, Section 4.B.2, Modification of Contract Terms and/or Additions is hereby amended as follows:

Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiler may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control. Unless otherwise stated in a Purchase Order, the products offered by Vendor may only be installed on hardware located within the state of Texas.

C. Appendix A, Section 5, Intellectual Property, is hereby deleted and replaced in its entirety as follows:

This Contract does not contemplate, authorize, or support acquisition of custom software products or custom services. If Vendor and Customer seek to contract for such custom 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.

D. Appendix A, Section 6.A.2, Electronic and Information Resources Accessibility Standards, as Required by 1TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only), is hereby amended and as follows:

Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act). Pursuant to this section, Vendor will provide VPATs where available. The State will direct all VPAT requests to the following email address: accessibility@sas.com.

Vendor Contract No. _____

E. Appendix A, Section 6.B.3, Purchase of Commodity Items (Applicable to State Agency Purchases Only), is hereby amended as follows:

After award of a Contract, Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts with exception to Orders that were established prior to a Contract award. Institutions of higher education are exempt from this Subsection 6.B.

F. Appendix A, Section 10.K, Limitation of Liability, is hereby amended as follows:

For any claims 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, none of the parties shall be liable to the other for punitive, special, or consequential damages (arising in contract or tort), even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages relating to all matters covered by the Contract or use of the Software, or any Work Product resulting from any services delivered hereunder, shall be limited to the greater of (a) \$1 Million Dollars, or (b) three times the license or service fees identified on the purchase order for the specific software product(s) or services at issue during the then-current license period. However, this limitation of Vendor's liability shall not apply to claims of bodily injury, or violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement.

G. Appendix A, Section 10.N.1, Required Insurance Coverage; Commercial General Liability, is hereby amended 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. All required insurance must be issued by companies that have an A- rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be included as Additional Insureds on Commercial General Liability and Business Automobile Liability 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 \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises

Vendor Contract No. _____

Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance, which must be agreed to by Vendor. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured; and
- d) Waiver of Subrogation.

H. Appendix A, Section 10.N.3, Required Insurance Coverage; Business Automobile Liability Insurance is hereby amended as follows:

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

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

Vendor Contract No. _____

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

Executive Information Systems, LLC

Authorized By: Signature on File

Name: R. Patrick Krause

Title: Vice President

Date: 3/22/2019

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: 4/4/2019

Office of General Counsel: Signature on File, 3/26/2019