

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

Amazon Web Services, Inc.

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 Amazon Web Services, Inc. ("Vendor"), with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210.

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-266, on February 10, 2017, for Cloud Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-266 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Sample Statement of Work; Appendix E, Service Agreement, Appendix F, Non-Disclosure Agreement; Appendix G, AWS GovCloud; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-266, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-266, 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 Appendix D, then Appendix E, then Appendix F, then 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 one-year renewal periods. 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 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**A. Services**

Services available under this Contract are limited to cloud services and related services as specified in Appendix C, Pricing Index. 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.

B. 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 services that are within the scope of Cloud Services. Vendor may propose such 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 7, 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-fourths 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) 475-1647
Facsimile: (512) 475-4759

Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

General Counsel
410 Terry Avenue North
Seattle, Washington 98109-5210
Attention: General Counsel
Fax: 206-266-7010

7. Statement of Work, Service Agreement, Shrink/Click-wrap Agreement

A. Statement of Work and Service Agreement

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix D of this Contract and the Service Agreement as set forth in Appendix E of this Contract. Customers may negotiate the terms and conditions of a SOW and Service Agreement to suit their business needs, so long as the negotiated terms and conditions do not diminish Vendor's commitments set forth in this Contract, including its appendices. Prior to becoming effective, a SOW must be mutually agreed upon in writing by Customer and Vendor.

B. Conflicting or Additional Terms

In the event that conflicting terms in linked or supplemental documents diminish the liability rights of DIR Customers or the State, such conflicting terms shall not take precedence over the terms of this Contract. Notwithstanding the foregoing: (i), additions, changes, or different terms related to the operations of the Services set forth in linked or supplemental documents will not be construed as creating a conflict with the terms of this Contract; and (ii) nothing herein limits DIR Customer obligations to remain responsible for activities that occur under their AWS accounts in accordance with the Contract.

Vendor shall not unilaterally require any additional document outside of this Contract that: 1) diminishes the rights, benefits, or protections of the Customer, or the definitions or measurements of them; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions or measurements of them except for obligations related to new services, features, or functionality.

C. 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.**

8. Authorized Exceptions to Contract and any Appendices.

- A. **Section 2. Definitions, B. Compliance Check**, is hereby replaced in its entirety with the following:

Compliance Check – an audit of Vendor’s compliance with the Contract with respect to Customers purchasing Vendor’s services under the agreement may be performed by, but not limited to, a third-party auditor, DIR Internal Audit department, or DIR contract management staff or their designees, in each case subject to entry of a non-disclosure agreement between Vendor and the relevant auditor as provided in Appendix F, Nondisclosure Agreement. A Compliance Check relating to financial or contract compliance can be satisfied by Vendor providing invoices, billing information and purchase orders relating to the agreement or other documents as requested by DIR in order to confirm that Vendor properly calculated and paid the Administrative Fee under the agreement; a Compliance Check relating to security concerns can be satisfied by Vendor providing DIR with Documentation (as defined in Appendix E - Services Agreement) or third party audit reports, such as SOC 1, Type 2 reports or their equivalent; provided, however, that if, despite third party audit reports, DIR has reason to believe that there are any security concerns that AWS is not addressing adequately, then DIR may require onsite inspection, subject to Section 8(C)(5) of this Appendix.

- B. **Section 2. Definitions, C. Contract**, is hereby replaced in its entirety with the following:

Contract - the document executed between DIR and Vendor into which this Appendix A, is incorporated. For the avoidance of doubt, all appendices, including Appendix E (“Service Agreement”) are incorporated into this agreement.

- C. **Section 2. Definitions, H. Service Agreement**, is hereby added:

Service Agreement – shall mean the Amazon Web Services (AWS) Customer Agreement between an individual Customer and Vendor as provided in Appendix E.

- D. **Section 3. General Provisions, H. Proof of Financial Stability**, is hereby replaced in its entirety with the following:

Either DIR or Customer may reasonably require Vendor to provide proof of financial stability prior to or at any time during the contract term.

- E. **Section 3. General Provisions, D. Assignment**, is hereby replaced in its entirety with the following:

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party.

- F. **Section 4, Intellectual Property Matters**, is hereby replaced in its entirety with the following:

Vendor is providing its commercially available services under the Contract. Unless expressly agreed to in writing, no custom work is authorized or payable under this Contract.

- G. **Section 5. Terms and Conditions Applicable to State Agency Purchases Only, A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only), Paragraph 2**, is hereby replaced in its entirety with the following:

Upon request and for products or services that may be subject to the State of Texas Accessibility requirements described in Section 5.A (1), Vendor may 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 of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act). Vendor acknowledges that if Vendor is unable to provide a VPAT that the applicable products or services may not be eligible for purchase under this Contract. Vendor and DIR will cooperate to assess whether Vendor's services are subject to such accessibility requirements in response to specific orders.

- H. **Section 6. Contract Fulfillment and Promotion, A. Service, Sales, and Support of the Contract**, is hereby replaced in its entirety with the following:

Vendor shall make service, sales, and support resources available to serve all Customers throughout the State that enter into mutual agreements with Vendor. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use commercially reasonable efforts to ensure that potential Customers are made aware of the existence of the Contract, which obligation can be satisfied by compliance with Subsection B, below.

- I. **Section 6. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, Subsection 1) Vendor Webpage**, is hereby replaced in its entirety with the following

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) contact information for Vendor;

- f) instructions for obtaining quotes and placing Purchase Orders;
- g) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- h) a link to the DIR "Cooperative Contracts" webpage; and
- i) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

- J. **Section 6. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, 5) Use of Access Data Prohibited** is hereby replaced in its entirety with the following:

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes without specific advance written consent of the relevant Customer. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

- K. **Section 6. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, 6) Responsibility for Content** is hereby restated:

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website specific to the Contract. DIR reserves the right to require a change of listed content on the sections of Vendor's website specific to the Contract if, in the reasonable opinion of DIR, it does not adequately represent the Contract provided that DIR may not require a change to any content related to the Vendor's website terms unrelated to the Contract.

- L. **Section 6. Contract Fulfillment and Promotion, C. Services Warranty, and Return Policies**, is hereby restated:

Vendor and Order Fulfiller will adhere to the Vendor's then-currently published policies concerning services warranties. Such policies for Customers will, at minimum, be in accordance with Vendor's standard warranty provisions in Appendix E.

- M. **Section 7. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, 1)** is hereby replaced in its entirety with the following:

- 1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

For the purposes of this Contract, Customer Price = MSRP. Vendor pays the Administrative Fee separately based on the Customer Price calculated as follows: Customer Price x DIR Administrative Fee, as set forth in the Contract.

- N. **Section 7. Pricing, Purchase Orders, Invoices, and Payments, D. Shipping, and Handling Fees,** is hereby replaced in its entirety with the following:

RESERVED.

- O. **Section 7. Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices,** is hereby replaced in its entirety with the following:

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. If Vendor does not reduce its pricing for the relevant product or service, DIR may notify customers and/or potential customers that the products or services in question are not authorized for purchase under the DIR contract. Alternatively, DIR may terminate the contract.

- P. **Section 7. Pricing, Purchase Orders, Invoices and Payments, H. Purchase Orders,** is hereby replaced in its entirety with the following:

All Customer Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor; provided, that additional terms and conditions contained in Purchase Orders will not be binding on Vendor unless accepted by Vendor in writing. An Accurate Purchase Order shall consist of an AWS 12-digit Account Number, Customer contract number, Customer purchase order number, Customer name, name of person submitting the purchase order, and contract name/phone number/e-mail/and postal address of where to send invoices.

- Q. **Section 8. Contract Administration, B, Reporting and Administrative Fees, 1) Reporting Responsibility,** is hereby replaced in its entirety with the following:

- a) Vendor shall be responsible for reporting all services purchased under the Contract to DIR. Vendor shall file with DIR the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.
- b) DIR shall have the right to verify required reports and to take any actions reasonably necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

- R. **Section 8. Contract Administration, B, Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, b)**, is hereby replaced in its entirety with the following:

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, at DIR's expense.

- S. **Section 8. Contract Administration, C. Records and Audit**, is hereby replaced in its entirety with the following:

Vendor recognizes and agrees that nothing in any portion of this Section 8.C will in any way limit or define the right or authority of the State Auditor's Office to conduct its audits or investigations.

1) Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor shall maintain adequate records to establish compliance with the Contract 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: Customer name, invoice date, invoice number, description, quantity, 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 reasonably request relating to the agreement.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records in each case subject to entry of a non-disclosure agreement between Vendor and the relevant auditor as provided in Appendix F, Nondisclosure Agreement. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and

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records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports resulting in material underpayment of the DIR Administrative Fee or material Vendor performance deficiencies under the agreement, DIR may invoice for the reasonable costs of the audit or investigation, which Vendor must pay within thirty (30) days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Vendor through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's reasonable satisfaction that Vendor's calculation of DIR's administrative fee is correct.

5) (a) Nothing in this Section 8.C grants Customer or any entity the right to inspect or audit records solely related to any customer of Vendor that is not purchasing through this Contract. Customer and its auditors may only perform a walk-through or visit ("Visit") of Vendor's site locations if (1) information and documentation provided by Vendor (including, e.g., professional, industry standard security audits) are not reasonably sufficient assurances under the circumstances, or (2) DIR has reason to believe an emergency or fraudulent situation exists concerning AWS's performance under the Contract.

(b) "Upon reasonable advance written notice of not less than 10 business days, AWS will allow DIR's auditors or investigators to conduct a Visit of AWS site location(s) used to provide the services to Customers, provided that: (i) such Visit is reasonably designed to provide DIR or its auditors or investigators with information relating to Vendor's compliance under the Agreement; (ii) the Visit occurs at a time reasonably specified by Vendor in accordance with applicable AWS policies (including investigation and security policies); (iii) no more than ten DIR representatives who must be certified auditors, IT professionals, or senior management ("Visitors") may participate in the Visit, while under the supervision and escort of AWS personnel, and the Visit will be conducted in accordance with AWS's standard policies, provided that those policies may not in any way impede the purpose of the Visit. Visitors may not be employees, representatives or affiliates of Vendor's competitors; (iv) the Visit is performed during AWS's normal business hours; (v) each auditor or investigator signs a non-disclosure agreement as provided in Appendix F, Nondisclosure Agreement; (vi) the Visit is conducted in a way that avoids any unreasonable or unnecessary disruption to AWS's operations; and (vii) all Services or features of AWS not being provided to DIR or its Customers, including "pre-release," "alpha," or "beta" services or features designated as such by AWS will not be part of the Visit. None of the foregoing limitations may in any way impede the purpose of the Visit."

T. **Section 9, Vendor Responsibilities, A. Indemnification**, is hereby replaced in its entirety with the following:

- 1) **INDEPENDENT CONTRACTOR.** VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.
- 2) **Acts or Omissions.** Moving IT infrastructure to Amazon Web Services creates a shared responsibility model between the Customer and AWS. AWS operates, manages, and controls the components from the host operating system and virtualization layer down to the physical security of the facilities in which the services operate. In turn, the Customer assumes responsibility and management of the guest operating system (including updates and security patches), other associated application software as well as the configuration of the AWS-provided security group firewall. AWS offers Customers with flexibility in terms of, for example, backups, archiving, disaster recovery, and data security needs, enabling Customers to customize their use of the services. Vendor shall indemnify and hold harmless the State of Texas and its OFFICERS FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS ("THIRD PARTY CLAIMS"), AND ALL RELATED THIRD PARTY CLAIM COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any negligent acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and its EMPLOYEES AND OFFICERS from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

- 4) **PROPERTY DAMAGE.** CUSTOMERS ARE RESPONSIBLE FOR ARCHITECTING THEIR SOLUTIONS AS DESIRED BASED ON, FOR EXAMPLE, THE SENSITIVITY OR IMPORTANCE OF THE CONTENT BEING PLACED ON THE SERVICES. THIS PERMITS CUSTOMERS TO ARCHITECT THEIR DATA IN A WAY THAT MINIMIZES AGAINST DATA LOSS OR OTHER PROPERTY DAMAGE. CUSTOMERS SHOULD UTILIZE DISASTER RECOVERY PROCEDURES, WHICH MAY INCLUDE UTILIZATION OF REDUNDANCY ACROSS MULTIPLE REGIONS OR OTHER PROCEDURES DISCUSSED ON THE AWS DISASTER RECOVERY SITE. IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED 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 THE AMOUNT DUE. VENDOR SHALL NOT BE LIABLE FOR ANY PROPERTY LOSS OR DAMAGE WHERE THE CUSTOMER COULD HAVE REASONABLY PROTECTED AGAINST THE LOSS OR DAMAGE BY UTILIZING REASONABLE, INDUSTRY-ACCEPTED DISASTER RECOVERY STRATEGIES THAT WERE AVAILABLE TO THE CUSTOMER VIA AWS.

U. Section 9, Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE is hereby replaced in its entirety with the following:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE

INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- V. **Section 9. Vendor Responsibilities, C. Vendor Certifications, Subsection ix**, is hereby replaced in its entirety:

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. The State of Texas expressly acknowledges that AWS, in its capacity as a commercial services provider, does not purchase products or materials in its performance of this Contract;

- W. **Section 9. Vendor Responsibilities, C. Vendor Certifications, Subsection x**, is hereby replaced in its entirety with the following:

RESERVED.

- X. **Section 9. Vendor Responsibilities, C. Vendor Certifications**, the last paragraph is replaced in its entirety with the following:

In addition, Vendor understands and agrees that, if Vendor responds to certain Customer pricing requests or Statements of Work, certain individual Customers may require Vendor to comply with additional terms and conditions or certifications due to state and federal law (e.g., privacy and security requirements). Such additional terms and conditions or certifications, if any, are subject to mutual agreement between the individual Customer and Vendor.

- Y. **Section 9. Vendor Responsibilities, F. Use of Subcontractors**, is hereby replaced in its entirety with the following:

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract. Subcontractors will not be deemed to include Vendor's corporate affiliates.

Z. Section 9. Vendor Responsibilities, G. Responsibility for Actions, Subsection 2) is hereby restated:

Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 17 of Appendix A to the RFO and/or Section 9.C. (xi) and (xii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

AA. Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel is hereby restated:

Unless specifically agreed to in writing, Vendor shall not provide any on-premises work for Customers. If Vendor chooses to accept Purchase Orders from Customers requiring on-premises work, then 1) Vendor may be subject to additional terms and conditions governing the protection of Customer data, files and/or materials ("Data") and 2) Vendor shall use their best efforts to preserve the safety, security, and integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damages to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors working onsite. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

BB. Section 9. Vendor Responsibilities, J. Background and/or Criminal History Investigation, is hereby replaced in its entirety with the following:

Some Customers require that prior to commencement of certain 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 requested by certain Customers having legislative authority to require such investigations. If Vendor wishes to contract with these Customers, Vendor shall permit the background and/or criminal history investigation of its employees who will be supporting the Contract and 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 referenced in this Section, then Customer may immediately and without penalty terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

CC. Section 9. Vendor Responsibilities, K. Limitation of Liability, is hereby replaced in its entirety with the following:

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.

DD. Section 9. Vendor Responsibilities, N. Required Insurance Coverage, is hereby replaced in its entirety with the following:

If and when the Vendor performs services that require Vendor's employees to perform work at any Customer premise and/or use employee vehicles, then this section would apply.

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within five (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. All required insurance must be issued by companies that are, and duly licensed, admitted, and authorized to do business in the State of Texas. 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, as noted further below including products/completed operations, where appropriate, with a separate aggregate of \$2,000,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others 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) Waiver of Subrogation;
- b) 30-day Notice of Termination.

EE. Section 9. Vendor Responsibilities, T. Deceptive Trade Practices; Unfair Business Practices, is hereby replaced in its entirety with the following:

- (a) Vendor represents and warrants that neither Vendor nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- (b) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

FF. Section 9. Vendor Responsibilities, U. Drug Free Workplace Policy, is hereby replaced in its entirety with the following:

Vendor promotes a drug-free work environment. The use or possession of illegal drugs or inappropriate use of prescription drugs by Vendor employees while at work or engaged in work-related activities is prohibited. Violation of this policy by Vendor employees may lead to discipline, up to and including termination. If a Customer has additional restrictions relating to drug free workplace requirements, Vendor shall comply with the additional requirements if Vendor wishes to contract with these Customers.

GG. Section 10. Contract Enforcement, A. Enforcement and Contract Dispute Resolution, 1) is hereby replaced in its entirety with the following:

Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas

Government Code or any successor statute, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

- HH. **Section 10. Contract Enforcement, B. Termination, 3) Termination for Convenience**, is hereby replaced in its entirety with the following:

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days' written notice. Such termination will be in accordance with Section 7 of Appendix E.

- II. **Section 10. Contract Enforcement, B. Termination, 4) Termination for Cause**, is hereby replaced in its entirety with the following:

a. Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, 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 Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b. Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order 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 or any successor statute, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code or any successor statute, 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.

c. Service Agreements

Agreements between Customers and Vendor may be terminated in accordance with terms in the Service Agreement or as agreed between Vendor and Customer.

- JJ. **Section 10. Contract Enforcement, B. Termination, 5) Immediate Termination or Suspension**, is hereby replaced in its entirety with the following:

DIR may immediately terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor (whether or not such potential violations directly impact the provision of goods or services under this Contract). Such termination will be in accordance with Section 7 of Appendix E. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to Vendor within five (5) business days after imposing the termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review Vendor's presentation, but is under no obligation to provide a formal response.

- KK. **Section 10. Contract Enforcement, D. Temporary Suspension**, is hereby added:

Notwithstanding any other provision of this Contract, Vendor may suspend service to Customer in accordance with Appendix E, Service Agreement or as otherwise agreed between Vendor and Customer.

- LL. **Section 11. Notification, A. Notices**, is hereby replaced in its entirety with the following:

Except as provided in Section 6 of the Contract, all notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

Vendor Contract No. _____

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

Amazon Web Services, Inc.

Authorized By: Signature On File

Name: Shannon Lowther

Title: Authorized Representative

Date: October 19, 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: 10/30/2018

Office of General Counsel: Signature On File 10/30/2018