

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR SERVICES

Accenture LLP

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 Accenture LLP (“Vendor”), with its principal place of business at 1501 South Mopac Expressway, Suite 300, Austin, Texas 78746.

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 2, 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, Statement of Work, Appendix E, ACP Services Agreement; Exhibit 1 Vendor’s Response to RFO DIR-TSO-TMP-266, including all addenda; and Exhibit 2, RFO DIR-TSO-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, Appendix E, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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. A. Service Offerings

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:

Thomas Pettit
Sr. Managing Director
Accenture LLP
1501 S MoPac Expressway, Suite 300
Austin, TX 78746
Phone: (512) 732-5300
Facsimile: (512) 652-7246
Email: thomas.pettit@accenture.com

7. A. Statement of Work and Service Agreement

Services provided under this Contract shall be based on the Appendix D, Sample Statement of Work (SOW) and Appendix E, ACP Services Agreement to this Contract. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the negotiated terms and conditions do not diminish Vendor's commitments set forth in the Appendix D, Sample Statement of Work, Appendix E, ACP Services Agreement, or this Contract.

B. Conflicting or Additional Terms

In the event that conflicting or additional terms in 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 or Publisher.

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 Appendix A, Standard Terms and Conditions dated September 29, 2017, for Service Contracts.

- A. **Appendix A, 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.

- B. **Appendix A, Section 6. C., Services Warranty and Return Policies**, is hereby replaced in its entirety with the following:

Vendor and Order Fulfiller will adhere to the Vendor's then-currently published policies concerning services warranties and returns. Such policies for Customers will not be materially more restrictive or more costly than warranty and return policies for other similarly situated Customers for the like services.

- C. **Appendix A, Subparagraph 3 of Section 7. C., Customer Price**, is hereby replaced in its entirety with the following:

If during the term of this Contract, pricing for the same services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those services under this Contract or (ii) to any other similarly situated customer, in either case under the same terms and conditions provided for the State for the same commodities and services under this Contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to services directly contracted by Vendor for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) business days and this Contract shall be amended to reflect the lower price.

- D. **Appendix A, Section 9A. 2., Acts or Omissions**, is hereby replaced in its entirety with the following:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, FOR PERSONAL INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, OR ASSOCIATED ECONOMIC LOSS AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any 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; provided however Vendor's liability for this indemnity shall not exceed in the aggregate five (5) million dollars 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.

- E. **Appendix A, Section 9 A. 3., Infringements, Subparagraphs (b) and (c)** are hereby replaced in their entirety with the following:

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 or unauthorized use of ACP Services 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, (v) solely by Customer data, (vi) an adjudicated claim of willful infringement directed at anyone other than Vendor and its affiliates, (vii) a combination of the ACP Services with any other product, service, software, content, data or method not supplied by Vendor which is not required for the functionality of the ACP Services; or a no fee or trial license of the ACP Services, or (viii) 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. Exclusive remedy. This Section 9 constitutes Customer's sole and exclusive remedy and Vendor's (and its affiliates') entire obligation to Customer with respect to any claim that the ACP Service(s) infringes or misappropriates the intellectual property rights of any third party.

- F. **Appendix A, Section 9 I., Security of Premises, Equipment, Data, and Personnel**, is hereby replaced in its entirety with the following:

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor shall use their best efforts to preserve the safety, security, and the 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 damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors working onsite. If a Vendor fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement. Cloud vendor's security obligations will be specified in the Appendix E (ACP Services Agreement) and each applicable Service Order.

- G. **Appendix A, Section 9. J., Background and/or Criminal History Investigation**, is hereby replaced in its entirety with the following:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer as agreed to by Vendor and Customer in Purchase Order or SOW. Should any such employee or subcontractor of the Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

- H. **Appendix A, Section 9. 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, 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 liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action, or for claims subject to Section 9.A.(2) hereof five million dollars. However, this limitation of Vendor's liability shall not apply to third party claims of bodily injury due to tortious negligence; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract (except as otherwise provided in Section 9.A.(2) hereof) ; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

- I. **Appendix A, Section 9. X., Disclaimer of Implied Warranties**, is hereby added as follows:

In addition any warranties provided in a SOW or Service Agreement, Vendor warrants that all goods it provides will conform to contract specifications and requirements and applicable industry and professional standards; and that it will perform all work in a good and workmanlike manner, conforming to contract specifications and requirements and applicable industry and professional standards. EXCEPT AS EXPRESSLY PROVIDED IN THE APPLICABLE SOW OR THIS CONTRACT, VENDOR, ITS AFFILIATES AND ITS LICENSORS MAKE NO REPRESENTATIONS AND PROVIDE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES, WORK PRODUCT, ACP SERVICES OR ANY THE THIRD PARTY COMPONENTS OR CONTENT EMBODIED THEREIN, INCLUDING ANY WARRANTY THAT THE ACP SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING CUSTOMER DATA OR THIRD PARTY COMPONENTS OR CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, AND INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. EACH PARTY, ITS AFFILIATES AND ITS LICENSORS DISCLAIM ALL, AND THE OTHER PARTY AGREES THAT IT IS NOT ENTITLED TO, ANY EQUITABLE OR IMPLIED INDEMNITIES. THESE DISCLAIMERS SHALL ONLY APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. VENDOR, ON BEHALF OF ITSELF AND ITS SUPPLIERS, SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE ACP SERVICES FOR HIGH RISK ACTIVITIES.

- J. **Appendix A, Section 10. C., Force Majeure**, is hereby replaced in its entirety with the following:

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take commercially reasonable steps that are within the party's control to continue performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order for convenience if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

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

Accenture LLP

Authorized By: Signature on File

Name: Jon Andrews

Title: Managing Director

Date: 2/11/2019

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: 2/21/2019

Office of General Counsel: Signature on File 2/19/2019