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**STATE OF TEXAS**

**DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES, AND MANAGED SERVICES**

***110 Holdings, LLC***

# 1 INTRODUCTION

## 1.1 Parties

This contract for Comprehensive Web Development and Managed Services (this "Contract") 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 110 Holdings, LLC, a Washington Limited Liability Company (hereinafter "Successful Respondent"), with its principal place of business at 275 118th Avenue South East Suite 200 Bellevue, Washington 98005.

## 1.2 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) RFO-CPO-TMP-564 on October 10, 2022, for Comprehensive Web Development and Managed Services (the "RFO"). Upon execution of all Contracts, a notice of award for RFO-CPO-TMP-564, shall be posted by DIR on the Electronic State Business Daily.

## 1.3 Order of Precedence

A. For transactions under this Contract, the order of precedence shall be as follows:
   1. this Contract;
   2. Appendix A, Standard Terms and Conditions;
   3. Appendix B, Successful Respondent's Historically Underutilized Businesses Subcontracting Plan;
   4. Appendix C, Pricing Index;
   5. Exhibit 1, RFO DIR-CPO-TMP-564, including all Addenda; and

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6. Exhibit 2, Successful Respondent's Response to RFO DIR-CPO-TMP-564, including all Addenda.

B. Each of the foregoing documents is hereby incorporated by reference and together constitute the entire agreement between DIR and Successful Respondent.

### 1.4 Definitions

Capitalized terms used but not defined herein have the meanings given to them in **Appendix A, Standard Terms and Conditions**.

## 2 TERM OF CONTRACT

The initial term of this Contract shall be up to two (2) years commencing on the date of the last signature hereto (the "Initial Term"), with one (1) optional two-year renewal and one (1) optional one-year renewal (each, a "Renewal Term"). Prior to expiration of the Initial Term and each Renewal Term, this Contract will renew automatically under the same terms and conditions unless either party provides written notice to the other party at least sixty (60) days in advance of the renewal date stating that the party wishes to discuss amendment or non-renewal.

## 3 OPTION TO EXTEND

Successful Respondent agrees that DIR may require continued performance under this Contract at the rates specified in this Contact following the expiration of the Initial Term or any Renewal Term. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed ninety (90) calendar days. Such extension of services shall be subject to the requirements of the Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written notice to the Successful Respondent.

## 4 PRODUCT AND SERVICE OFFERINGS

Products and services available under this Contract are limited to the technology categories defined in Request for Offer RFO-CPO-TMP-564 for Comprehensive Web Development and Managed Services. At DIR's sole discretion, Successful Respondent

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may incorporate changes or make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO.

# 5 PRICING

## 5.1 Pricing Index

Pricing to Customers shall be as set forth in **Appendix C, Pricing Index**, and shall include the DIR Administrative Fee (as defined below).

## 5.2 Customer Discount

A. The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in **Appendix C, Pricing Index**. Successful Respondent shall not establish a List Price or MSRP for a particular solicitation. For purposes of this Section, "List Price" is the price for a product or service published in Successful Respondent's price catalog (or similar document) before any discounts or price allowances are applied. For purposes of this Section, "MSRP," or manufacturer's suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.

B. Customers purchasing products or services under this Contract may negotiate additional discounts with Successful Respondent. Successful Respondent and Customer shall provide the details of such additional discounts to DIR upon request.

C. If products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract, or (ii) to any other customer under the same terms and conditions provided for the State for the same products and services under this contract, then the price of such products and services under this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Successful Respondent for a quantity of one (1), but does not apply to volume or special pricing purchases. Successful Respondent shall notify DIR within ten (10) days of providing a lower price as described in this Section, and this Contract shall be amended within ten (10) days to reflect such lower price.

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## 5.3 Changes to Prices

A. Subject to the requirements of this section, Successful Respondent may change the price of any product or service upon changes to the List Price or MSRP, as applicable. Discount levels shall not be subject to such changes and will remain consistent with the discount levels specified in this Contract.

B. Successful Respondent may revise its pricing by publishing a revised pricing list, subject to review and approval by DIR. If DIR, in its sole discretion, finds that the price of a product or service has been increased unreasonably, DIR may request that Successful Respondent reduce the pricing for the product or service to the level published before such revision. Upon such request, Successful Respondent shall either reduce the pricing as requested, or shall remove the product or service from the pricing list for this Contract. Failure to do so will constitute an act of default by Successful Respondent.

## 5.4 Shipping and Handling

Prices to Customers shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees may be charged to Customers for standard shipping and handling. If a Customer request expedited or special delivery, Customer will be responsible for any additional charges for expedited or special delivery.

## 5.5 Travel Expenses

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of such services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking, and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services provided under this Contract. The DIR Administrative Fee is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by the Customer. The Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

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# 6 DIR ADMINISTRATIVE FEE

A. Successful Respondent shall pay an administrative fee to DIR based on the dollar value of all sales to Customers pursuant to this Contract (the "DIR Administrative Fee"). The amount of the DIR Administrative Fee shall be seventy-five hundredths of a percent (0.75%) of all sales, net of returns and credits. For example, the administrative fee for sales totaling $100,000 shall be $750.

B. All prices quoted to Customers shall include the DIR Administrative Fee. DIR reserves the right to increase or decrease the DIR Administrative Fee during the term of this Contract, upon written notice to Successful Respondent without amending this Contract. Any increase or decrease in the DIR Administrative Fee shall be incorporated in the price to Customers.

# 7 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION

In addition to the requirements listed in **Appendix A, Section 7.2, Internet Access to Contract and Pricing Information**, Successful Respondent shall include the following with its webpage:

A. A current price list or mechanism to obtain specific contract pricing;
B. MSRP/list price or DIR Customer price;
C. Discount percentage (%) off MSRP or List Price;
D. Warranty policies; and
E. Return policies.

# 8 USE OF ORDER FULFILLERS

## 8.1 Authorization to Use Order Fulfillers

Subject to the conditions in this Section 8, DIR agrees to permit Successful Respondent to utilize designated order fulfillers to provide products, services, and support resources to Customers under this Contract ("Order Fulfillers").

## 8.2 Designation of Order Fulfillers

A. Successful Respondent may designate Order Fulfillers to act as the distributors for products and services available under this Contract. In designating Order Fulfillers, Successful Respondent must be in compliance with the State's Policy on

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Utilization of Historically Underutilized Businesses. DIR and Successful Respondent will agree on the number of Order Fulfillers that are Historically Underutilized Businesses as defined by the CPA.

B. In addition to the required Subcontracting Plan, Successful Respondent shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
C. DIR reserves the right to require Successful Respondent to rescind any Order Fulfiller participation or request that Successful Respondent name additional Order Fulfillers should DIR determine it is in the best interest of the State.
D. Successful Respondent shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of this Contract. Successful Respondent shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of this Contract.
E. Successful Respondent may qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Successful Respondent's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the criteria.
F. Successful Respondent shall not prohibit any Order Fulfiller from participating in other procurement opportunities offered through DIR.

## 8.3 Changes in Order Fulfiller

Successful Respondent may add or remove Order Fulfillers throughout the term of this Contract upon written authorization by DIR. Prior to adding or removing Order Fulfillers, Successful Respondent must make a good faith effort to revise its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Successful Respondent shall provide DIR with its updated Subcontracting Plan and the Order Fulfillers information listed above.

## 8.4 Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall be in accordance with Section 5.

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# 9 NOTIFICATION

All notices under this Contract shall be sent to a party at the respective address indicated below.

**If sent to the State**:

Lynn Hodde or Successor in Office
Interim Chief Procurement Officer
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Email: hershel.becker@dir.texas.gov

**If sent to Successful Respondent:**

Kyle Keyser
Managing Director
110 Holdings, LLC
275 118th Ave SE Ste 200
Bellevue, WA 98005
Phone: (916) 246-4923
Email: govcontracts@launchcg.com

# 10 SOFTWARE LICENSE

## 10.1 Software License Agreement

A. Customers acquiring software licenses under this Contract shall hold, use, and operate such software subject to compliance with the Software License Agreement. Customer and Successful Respondent may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Successful Respondent. Successful Respondent shall make the Software License Agreement terms and conditions available to all Customers at all times.

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B. Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement.

## 11 CONFLICTING OR ADDITIONAL TERMS

A. The terms and conditions of this Contract shall supersede any additional conflicting or additional terms in any additional service agreements, statement of work, and any other provisions, terms, conditions, and license agreements, including those which may be affixed to or accompany software upon delivery (sometimes called shrink-wrap or click-wrap agreements), and any linked or supplemental documents, which may be proposed, issued, or accepted by Successful Respondent and Customer in addition to this Contract (such additional agreements, "Additional Agreements"), regardless of when such Additional Agreements are proposed, issued, or accepted by Customer. Notwithstanding the foregoing, it is Customer's responsibility to review any Additional Agreements to determine if Customer accepts such Additional Agreement. If Customer does not accept such Additional Agreement, Customer shall be responsible for negotiating any changes thereto.

B. Any update or amendment to an Additional Agreement shall only apply to Purchase Orders for the associated product or service offering after the effective date of such update or amendment; provided that, if Successful Respondent has responded to a Customer's solicitation or request for pricing, any subsequent update or amendment to an Additional Agreement may only apply to a resulting Purchase Order if Successful Respondent directly informs such Customer of such update or amendment before the Purchase Order is executed.

C. Successful Respondent shall not require any Additional Agreement that: i) diminishes the rights, benefits, or protections of Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of Customer; or ii) 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.

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D. If Successful Respondent attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to this Contract or the Purchase Order between Successful Respondent and Customer, and Successful Respondent will nonetheless be obligated to perform such Purchase Order without regard to the prohibited documents, unless Customer elects instead to terminate such Purchase Order, which in such case may be identified as a termination for cause against Successful Respondent.

## 12 AUTHORIZED EXCEPTIONS TO APPENDIX A, STANDARD TERMS AND CONDITIONS

No exceptions have been agreed to by DIR and Successful Respondent.

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

**110 Holdings, LLC**

**Authorized By:** DocuSigned by: A34B7526EF794A4...

**Name:** Kyle Keyser

**Title:** Managing Director

**Date:** 9/8/2023 | 3:29 PM CDT

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

**Authorized By:** DocuSigned by: Lynn Hodde 0822F0E300F24F3...

**Name**: Lynn Hodde

**Title:** Interim Chief Procurement Officer

**Date:** 9/14/2023 | 7:23 AM CDT

**Office of General Counsel:** DS MK

**Date:** 9/13/2023 | 7:31 PM CDT