

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR SERVICES**  
**Rackspace US, Inc.**

## **1 Introduction**

### **1.1 Parties**

This contract for deliverables-based information technology services (DBITS) (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 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Rackspace US, Inc., a Delaware foreign for-profit corporation (hereinafter “Successful Respondent”), with its principal place of business at 1 Fanatical Place, San Antonio, Texas 78218.

### **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) DIR-CPO-TMP-553, on 06/15/2021, for Deliverables-based Information Technology Services (DBITS) (the “RFO”). Upon execution of all Contracts, a notice of award for DIR-CPO-TMP-553 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:
  - i. this Contract;
  - ii. Appendix A, Standard Terms and Conditions;
  - iii. Appendix B, Successful Respondent’s HUB Subcontracting Plan;
  - iv. Appendix C, DBITS Sample Statement of Work;
  - v. Exhibit 1, RFO DIR-CPO-TMP-553, including all Addenda; and
  - vi. Exhibit 2, Successful Respondent’s Response to RFO DIR-CPO-TMP-553, 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 governing purchase transactions.

### **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 two (2) optional one-year renewals (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 Contract 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 four (4) calendar months. Such extension of services shall be subject to the requirements of this Contract, with the sole and limited exception that the term shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written notice to Successful Respondent.

## **4 Service Offerings**

Services available under this Contract are limited to the technology categories defined in Request for Offer DIR-CPO-TMP-553 for deliverables-based information technology services. At DIR’s sole discretion, Successful Respondent may incorporate changes or make additions to its service offering, provided that any changes or additions must be within the scope of the RFO. Successful Respondent has been awarded the following Technology Category:

Application Development, Maintenance, and Support, Technology Upgrade, Migration, and Transformation; and Enterprise Resource Planning (ERP).

## **5 Pricing**

Pricing for services under this Contract will be directly negotiated by Customer and Successful Respondent and shall be set forth in the applicable Statement of Work. Pricing shall include the DIR Administrative Fee (as defined below).

## **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 Notification**

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

### **If sent to the State:**

Hershel Becker or Successor in Office  
Chief Procurement Officer  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Email: [hershel.becker@dir.texas.gov](mailto:hershel.becker@dir.texas.gov)

### **If sent to Successful Respondent:**

Joe Nanus  
Rackspace US, Inc.  
1 Fanatical Place  
San Antonio, Texas 78218  
Phone: (210) 890-5641  
Email: [sled@rackspace.com](mailto:sled@rackspace.com)

## **8 Statement of Work**

- a) Services provided under this Contract shall be in accordance with the Statement of Work as set forth in **Appendix C** of this Contract. Successful Respondent and Customer may agree to terms and conditions that do not diminish or lessen the rights or protections of the Customer or the responsibilities or liabilities of Successful Respondent.
- b) Each Statement of Work for a state agency Customer shall be in accordance with Section 2157.0685, Texas Government Code, and 1 TAC 212, if applicable.

## **9 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.

**DIR Contract No. DIR-CPO-5004**  
**Rackspace US, Inc. - 17432193591**

- 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.

**10 Authorized Exceptions to Appendix A, Standard Terms and Conditions**

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

(Remainder of this page intentionally left blank.)

**DIR Contract No. DIR-CPO-5004**  
**Rackspace US, Inc. - 17432193591**

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

**Rackspace US, Inc.**

**Authorized By:** \_\_\_\_\_  
*Rick Rosenberg*

DocuSigned by:  
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**Name:** Rick Rosenberg

**Title:** VP & GM, Government Solutions

**Date:** 12/14/2021 | 5:21 PM EST

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

**Authorized By:** \_\_\_\_\_

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** \_\_\_\_\_

**Office of General Counsel:** \_\_\_\_\_

**Date:** \_\_\_\_\_