

**CONTRACT for
ADVERTISING EFFECTIVENESS AND ACCOUNTABILITY RESEARCH SERVICES
between
STRATEGIC MARKETING & RESEARCH, INC.
and the
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT AND TOURISM DIVISION**

A.1 DESCRIPTION AND REQUIREMENTS

A.1.1 Description of Services Required

The Office of the Governor, Economic Development and Tourism Division, (OOG) and Strategic Marketing & Research Services, Inc., (Contractor) hereby contract and agree that Contractor shall conduct an ongoing survey that evaluates the effectiveness of the OOG national travel advertising campaign in generating out-of-state visitation to Texas and estimates the return on investment to the State of Texas. In addition to evaluating the OOG national travel advertising campaign, additional analyses will measure the in-state tourism marketing efforts of other state agencies that operate under a Memorandum of Understanding (MOU) with OOG to effectively market tourism in Texas. The effectiveness of the State of Texas Travel Website, including conversion, shall also be measured and may be incorporated into the overall advertising effectiveness and return on investment as determined by Contractor and OOG.

A.1.2 Term of the Contract

Contract shall be from date of award through August 31, 2015.

A.1.3 Renewal and Extension Options

- a. **Contract Renewals** – The Contract may be renewed for one (1) additional 24 month period provided both parties agree in writing to do so, prior to the expiration date.
 1. Subject to the availability of funds, OOG and the Contractor may mutually agree to renew the performance period of the Contract by extending the expiration date for a maximum renewal of one (1) consecutive 24-month period. OOG will exercise its option to renew the performance period by providing the Contractor with a written advance notice of intent to renew the performance period of the Contract. In the written advance notice of intent, OOG will state the proposed total performance period of the Contract. OOG will follow the written advance notice of intent with a written contract amendment which, when agreed upon in writing by both parties, will extend the expiration date of the performance period. The written contract amendment will be executed no later than the last day of the current contract performance period.
 2. Optional performance period will be limited to those specified above, and shall include the same services, including any amendments, as required in the previous performance period. Unit prices for services provided during any optional performance period shall not exceed those quoted for the optional performance periods by the Contractor in their original proposal.
- b. **Contract Extensions** - Subject to availability of funds, OOG may exercise its right to extend the performance period of the Contract by means of a written notice of intent to the Contractor, followed by a contract amendment. An extension may be used: 1) after the expiration of all available contract renewal periods; 2) in the event that OOG and the Contractor have decided not to renew the Contract; or 3) in the event that circumstances require a temporary, short-term extension of performance under the Contract.

OOG will provide the Contractor with a sixty (60) day written advance notice of intent to extend the performance period of the Contract. In this written notice to the Contractor, OOG will state the anticipated number of days or months in the extension period and the proposed total performance period of the Contract. The contract amendment will be issued no later than the last day of the current contract performance period. OOG reserves the right to extend the performance period of the contract, on a month-to-month basis, for a maximum of twelve (12) additional months. All services provided during any extended performance period shall be subject to the same proposal prices, performance requirements and terms and conditions, including any amendments, as required in the previous performance period.

A.1.4 Termination

This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.

- a. **Termination for Convenience.** OOG and Contractor reserve the right to terminate the Contract at any time for convenience, in whole or in part, by providing sixty (60) calendar days advance written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. OOG shall be liable for payments limited only to the portion of work authorized by OOG in writing and completed prior to the effective date of cancellation, provided that OOG shall not be liable for any work performed that is not acceptable to OOG and/or does not meet contract requirements. All work products produced by the Contractor and paid for by OOG shall become the property of OOG and shall be tendered upon request.
- b. **Termination for Default.** OOG may, by written notice of default to the Contractor, terminate this Contract, in whole or in part, for cause if the Contractor fails to perform in full compliance with the contract requirements, through no fault of OOG. OOG will provide a thirty (30) day written notice of termination to the Contractor (delivered by certified mail, return receipt requested) of intent to terminate, and OOG will provide the Contractor with an opportunity for consultation with OOG prior to termination.
 1. Upon receipt of written notice to terminate, the Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to OOG, all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Contract, whether completed or in process.
 2. Upon termination, OOG may take over the work and pursue the same to completion by contract with another party or otherwise.
 3. Contractor will be required to reimburse OOG for any additional costs incurred as a result of the default.

c. No Liability Upon Termination

If the Contract is terminated for any reason, the OOG and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

A.1.5 Amendments and Changes

Any amendment or change to the contract performance requirements whether by modification or supplement, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the Contractor and OOG. Neither party to this Contract will be bound by any oral statements, contracts, or representations contrary to the written contract requirements and terms and conditions.

A.1.6 Definitions

- a. **Ad Hoc Services:** As required by OOG, the Contractor shall provide additional information and/or analytical services not specifically outlined or included in the Contractor's monthly services fee (Para A.1.6 (i)) but which fall within the scope of the contract services. Such services will be purchased at OOG's option, on an "as needed" basis, in "as needed" quantities, as determined by OOG in response to specific events or opportunities. OOG will request such services, in writing.
- b. **Advertising Tiers:** Different groups of Designated Market Areas (DMAs) as defined by OOG. Advertising Tiers include Tier One, Tier Two, Tier Three and Tier Four.
- c. **Contractor:** Respondent to Request for Proposals.
- d. **Designated Market Areas (DMA):** A group of counties in which the named area's commercial TV stations achieve the highest audience share. This is a non-overlapping geographical area created by the A.C. Nielsen Company for planning, buying, comparing and evaluating television audiences across various markets. Texas defines its market regions in terms of DMAs.
- e. **Gantt Chart:** Traditional project management tool that displays resources and deliverables on a time sequenced chart. No particular format is required by this agreement. A chart created using Excel or any other standard application is acceptable. The Gantt chart or flowchart, however, must display key events over time in a manner which will allow managers to track contracts and agreements at least on a monthly basis. More frequent tracking may be required for some projects.
- f. **Good Faith Effort:** Good faith efforts include, but are not limited to, documented policies relating to the use of HUBs, identification of HUBs, and HUB outreach efforts.
- g. **Historically Underutilized Businesses (HUBs):** A minority or women-owned business as defined by Texas Government Code, Title 10, Subtitle D, Chapter 2161. <http://www.window.state.tx.us/procurement/prog/hub/>
- h. **Memorandum of Understanding (MOU):** A formal relationship between OOG and the Texas Commission on the Arts, Texas Historical Commission, Texas Parks & Wildlife Department and the Texas Department of Transportation to encourage collaboration and reduce overlap in travel marketing. The MOU requires a combined ROI to measure the effectiveness of the combined tourism marketing of all agencies.
- i. **Monthly Service Fee:** The firm, fixed monthly fee OOG will pay the Contractor to fully compensate the Contractor for the costs of all of the Contractor's in-house services and expenses required to complete work under this Contract. Such expenses include: all labor (e.g., all agency account service time; account management, direction, supervision, and coordination; strategic counsel; crisis management; accounting and billing; administrative support; legal services and fees, etc.; plans and reports; facilities; equipment, etc.) required to meet the contract performance requirements. The monthly service fee also includes all incidental and normal business operating expenses, such as: local and long distance phone (landline and mobile) calls; facsimile; local travel; postage; local courier service; internal copying; supplies; materials; parking; and other ongoing services performed. The monthly service fee does not include Ad Hoc Services. (Para. A.1.6 (a).)
- j. **Official State of Texas Travel Guide:** informational publication produced by the Texas Department of Transportation which includes general information about Texas and an alphabetical listing of Texas cities with specific sites, activities, and attractions highlighted. It is included in a package of materials sent to individuals who respond to OOG's tourism advertising.

- k. **Official State of Texas Travel Website:** informational website hosted at www.TravelTex.com which includes general information about Texas cities, activities, attractions as well as other trip planning resources and promotions.
- l. **Panel:** A continuing sample of people or households that are measured repeatedly.
- m. **Respondent:** An entity submitting a proposal in response to a solicitation.
- n. **State of Texas Business Day:** Monday through Friday, 8:00 a.m. through 5:00 p.m., except for scheduled State of Texas and national holidays.
- o. **State of Texas Fiscal Year:** the period beginning September 1 and ending August 31.
- p. **Sample** – sample should be representative of the U.S. population and each advertising tier designated by OOG. Respondents should be the primary decision-maker for leisure travel destinations and have taken a vacation or leisure trip sometime in the past 24 months.
- q. **Tier One:** The Designated Market Areas (DMAs) immediately surrounding Texas and the origin for the largest number of out-of-state visitors to the state are called Tier One. This area approximates a circle about 250 miles from the Metropolitan Statistical Areas (MSAs) of Texas.
- r. **Tier Two:** includes the DMAs within the approximate ring from about 250 miles from Texas MSAs (Tier One) to about 500 miles from Texas MSAs.
- s. **Tier Three:** includes those DMAs beyond the Tier Two range in the continental United States. Tier Three may be divided regionally with East, Midwest and West groupings of DMAs.
- t. **Tier Four:** includes DMAs within Texas.

A.1.7 Overview

- a. **Mission.** It is the mission of the Texas Tourism program to market Texas as a premier travel destination to domestic non-Texan and international travelers, thereby generating non-Texan travel to the state that increases revenues and creates jobs for Texas communities and travel industry businesses.
- b. **Program Organization.** Detailed information on OOG's Tourism marketing program (Texas Tourism) which is organized into three interrelated functional areas: Travel Research, Advertising and Public Relations can be obtained at www.travel.state.tx.us.
- c. **Current Marketing Plan.** A copy of OOG's current tourism marketing plan can be obtained at www.travel.state.tx.us. The plan includes briefings on each of the primary target markets and identifies key target audiences.
- d. **Travel Research Information.** OOG's travel research reports and information can be obtained at www.travel.state.tx.us.

A.2 STATEMENT OF WORK – SERVICE REQUIREMENTS

A.2.1 Objectives

OOG strives to use the most innovative and cost-effective advertising and marketing programs to raise

awareness on a state, national and international level of Texas as a premier travel destination. With this in mind, the Contractor shall have the following goals while providing Advertising Effectiveness and Accountability Research services for OOG:

- a. Research should have well formulated procedures.
- b. Research approach should be well designed and well executed.
- c. Research data and assumptions should be sound.
- d. Research findings should be useful and advance knowledge.
- e. Research implications and recommendations should logically follow from the findings and be explained thoroughly.
- f. Research documentation should be accurate, cogent and understandable to non-technical readers.
- g. Research should be relevant to the client and other stakeholders.
- h. Research should be objective, independent, and balanced.
- i. Research should be verifiable and defensible to a peer review or audit.

A.2.2 Advertising Effectiveness and Accountability Research Services

- a. Evaluate the effectiveness of OOG's national travel advertising campaign in generating out-of-state visitation to Texas.
- b. Estimate the return on investment (ROI) to the State of Texas in state tax dollars generated from out-of-state visitation to Texas influenced by OOG's national travel advertising campaign.
- c. Evaluate the effectiveness of in-state tourism marketing efforts of Texas state agencies operating under a Memorandum of Understanding (MOU) with OOG to conduct tourism marketing.
- d. Estimate the combined return on investment (ROI) to the State of Texas in state tax dollars generated from out-of-state and in-state visitation to and within Texas influenced by OOG's national travel advertising campaign and the in-state tourism marketing efforts of Texas state agencies operating under the Memorandum of Understanding (MOU).
- e. Evaluate the effectiveness and estimate visitor conversion for the Official State of Texas Travel Guide and Official State of Texas Travel Website. Visitor conversion may be included in return-on-investment estimates as seen fit by OOG and the Contractor.
- f. Evaluate the effectiveness and estimate the return on investment for spot marketing and advertising initiatives that may include activities in domestic and international markets.

A.2.3 Measurement

OOG holds the following expectations for execution of work and how it will be performed:

- a. **Deliverables.** The following deliverables shall address the Advertising Effectiveness and Accountability Research Services and must be delivered by the due dates provided. Contractor shall provide a bound copy

of each report along with an electronic copy. Contractor may suggest other deliverables in addition to those listed below.

1. Signed Gantt Chart within 10 working days of Purchase Order Receipt.
 2. Monthly Dashboards (as available).
 3. First Fiscal Quarter Report (September through November) by last business day of second week of December.
 4. Second Fiscal Quarter Report (December through February) by last business day of second week of March.
 5. Third Fiscal Quarter Report (March through May) by last business day of second week of June.
 6. Fourth Fiscal Quarter Report (June through August) by last business day of second week of August.
 7. Annual Fiscal Year Report (September through August) by last business day of September.
 8. Annual Presentation (scheduled by mutual agreement) before last business day of September unless extended by OOG for unusual circumstances.
- b. **Reports.** The Contractor, in coordination with OOG's designated representative, shall compile and maintain an ongoing project sheet or Gantt Chart, containing project information such as name and anticipated date of completion along with pertinent deadlines and contact information. Updates and status reports shall be provided to OOG on an as needed basis.
1. **Quarterly and Annual Reports.** All reports shall be prepared in standard publication format and include a brief executive summary at the beginning of the report that explains the ROI estimate and a discussion of any external events or trends that may have affected the estimate, a table of contents, a list of figures, the body of the text divided into chapters as appropriate, and a bibliography, if appropriate. The reports shall include appropriate graphs, charts, and discussion of the data including time series comparisons by month and year to year as appropriate.
 - a. Quarterly Reports must include analyses providing updated annual estimates addressing the services referenced in (A.2.2b, A.2.2d, and A.2.2e) using a methodology agreed upon by OOG and the Contractor and may include additional analyses created by the Contractor.
 - b. The Annual Report must include analyses providing a final annual estimate for the State of Texas fiscal year for the services referenced in (A.2.2b, A.2.2d, and A.2.2e) using a methodology agreed upon by OOG and the Contractor. The annual report must include analyses addressing the services referenced in (A.2.2a, and A2.2c) and may include additional analyses created by the Contractor.
 - c. The methodologies used shall be included in an appendix to the reports that can be clearly understood by non-technical readers. Contractor shall clearly state the level of confidence associated with this data and the point range associated with this confidence level based on varying sample sizes so that it can be clearly understood by non-technical readers.
 - d. Deliverables addressing the services referenced in A.2.2(f) should be proposed as ad hoc services along with any other suggestions from the Contractor.

A.2.4 Annual Presentation

Contractor shall provide a professional quality, formal presentation of the study's findings if requested by OOG staff at a Texas location to be determined by OOG following the completion of the annual report. The date and time for presentation shall be determined by the OOG staff as mutually agreed to by both parties; however the presentation shall normally be completed prior to the last day of August. Presentation shall include use of handouts and audio/visual and/or projection equipment and materials, as appropriate. Contractor shall include additional time (approximately one hour) following the Contractor's presentation to allow for a question and answer session.

A.3 FINANCIAL MATTERS

A.3.1 Contract Total

Total annual payments under this Contract shall not exceed the sum of Two Hundred Forty-Four Thousand Eight Hundred Dollars (\$244,800). Any increase(s) in the contract amount for any given performance period as a result of increases in funding shall be approved in advance and in writing by OOG. The total of any and all such increase(s) should not exceed 25% of the original amount determined for that contract period.

A.3.2 Continued Appropriations

This Contract is contingent upon the continued availability of appropriated state funds. This Contract shall terminate, without liability or penalty to OOG, in the event that appropriations are not available.

A.3.3 No Debt against the State

The award of this Contract does not guarantee that any level of services or funding will be authorized during the term of the Contract. This Contract shall not be construed as creating any debt by or on behalf of the State of Texas, and all obligations of the State of Texas, regarding this Contract, are subject to the continued availability of funds, per Section A.3.2.

A.3.4 Purchase of Services

Excluding the Contractor's monthly service fee, OOG cannot and does not guarantee the purchase of any services during the contract performance period (including any optional contract renewal or extension periods). All quantities of services and work products (excluding the Contractor's monthly services fee) shall be purchased upon OOG's request, in "as needed" quantities, on an "as needed" basis, as determined by OOG.

A.3.5 Purchase Order

The State of Texas shall issue written notice (e.g., purchase order, contract renewal or extension notice, etc.) authorizing the purchase of services specified in the contract performance requirements. No authorization for the purchase of any services is provided until the proposer/Contractor receives such written notice from the state.

Immediately upon receiving the purchase order, the Contractor shall identify the person authorized to receive direction from OOG, to manage the work being performed, and to act on behalf of the Contractor ("Authorized Representative"). The Contractor shall ensure that it's Authorized Representative, or his or her designee, is available at all times for consultation with OOG.

A.3.6 Delivery

All deliveries shall be made in accordance with the contract requirements. If Contractor foresees problems, delays or adverse conditions which may prevent the Contractor from meeting delivery requirements, the Contractor shall give written notice to OOG which explains the reason(s) for the delay and which provides an alternate delivery for OOG approval. OOG has the right to extend delivery date if reasons appear valid to OOG, at its sole discretion. Contractor shall keep OOG advised at all times of delivery status. Default in promised delivery (without accepted reasons) authorizes OOG to purchase services elsewhere and charge full increase, if any, in costs and handling to defaulting Contractor. No substitutions or cancellations shall be permitted without prior written approval of OOG. Default in delivery may result in termination of the Contract, for reason of default, in accordance with paragraph A.1.4(b).

A.3.7 Acceptance of Work Performed

All work performed by the Contractor shall be accepted in writing by OOG (or designee) before payment will be approved. Acceptance shall be based upon Contractor's compliance with all contract requirements. OOG will not pay for work which is of poor quality and/or fails to fully comply with the contract requirements. Should OOG determine the Contractor's work to be of poor quality and/or Contractor fails to perform services which comply with the contract requirements, OOG may require the Contractor to promptly re-perform the services in conformity with the Contract requirements, at no cost to OOG, or OOG may refuse to pay for Contractor's work. OOG may further require new performance or a refund in the event that poor quality or unacceptable work is discovered after payment has been made. Failure to perform work in compliance with all contract requirements may result in termination of the Contract for reason of default, in accordance with A.1.4.b.

A.3.8 Invoicing and Payment

- a. The Contractor shall submit itemized monthly invoices for all services completed, delivered to and accepted by OOG, per the contract requirements.
- b. Invoices shall be submitted once every thirty (30) days. Invoice amounts shall be in U.S. dollars. Each invoice shall reference the OOG purchase order number. All invoices shall be made payable to the Contractor at the address shown on the purchase order.
- c. Invoices and payment inquiries shall be submitted directed to:
Accounts.Payable@Governor.state.tx.us or by mail to:
Office of the Governor
Accounts Payable
P.O. Box 12878
Austin, Texas 78711-2878
- d. Each invoice is subject to review and approval by OOG before payment will be processed. Normal payment processing time for services which have been completed, delivered to, and approved by OOG is thirty (30) calendar days after receipt of a valid, uncontested invoice. OOG will incur no penalty for late payment if payment is made in thirty (30) or fewer days from receipt of goods or services and an uncontested invoice. Payments shall be made consistent with Chapter 2251, Texas Government Code.
- e. The Contractor shall bill and OOG will make payment to the Contractor for approved costs incurred in accordance with the following:
 1. Monthly Services Fee. OOG will pay the monthly service fee, as stated on the State of Texas contract. Invoices for partial month's services shall be pro-rated and paid based upon a 30-day work period

(month).

- f. Any invoice that does not comply with the minimum requirements stated above may not be considered valid and may be subject to rejection and/or return to the Contractor.
- g. Upon satisfactory completion by the Contractor of all the tasks identified in the Contract, acceptance of such tasks by OOG, and delivery of the release of claims, the Contractor will be paid the unpaid balance of any money due for such tasks in accordance with the payment terms outlined in the Contract. The Contractor agrees that determination of satisfactory completion will be based entirely on the judgment of the staff of OOG. The Contractor further agrees to exempt OOG and its staff from damages or claims arising from the enforcement of this provision.
- h. No advance payments will be made to the Contractor under the terms of this Contract in compliance with State of Texas Comptroller Purchasing Policies and Procedures.

A.3.9 Accounting Systems

The Contractor shall have an accounting system that accounts for costs in accordance with generally accepted accounting principles and is compatible with the State of Texas Uniform Statewide Accounting System. The Contractor's accounting system must include an accurate and organized file/records system for accounting and financial purposes for providing backup materials for billings.

A.3.10 Inspections

Throughout the contract period, all services, including all work products, shall be subject to inspection and test by authorized OOG representatives. OOG reserves the right, at all reasonable times, to have access to and inspect all goods and services being provided by the Contractor and its subcontractors, including but not limited to, all facilities, equipment, supplies, and pertinent records or written material relating to the contract requirements. Failure of the Contractor and its subcontractors to provide reasonable access to authorized OOG representatives who desire to perform such inspections or tests, or failure of services to comply with the contract terms shall be deemed unacceptable. In the event inspected or tested services are deemed unacceptable by OOG for failure to meet or exceed all contract requirements, the cost of the sample used and the cost of testing shall be borne by the Contractor.

A.3.11 Audit, Access to Records

- a. The Contractor shall maintain and make available for review, inspection and/or audit books, records, documents, and other evidence reasonably pertinent to performance on all work under this Contract, including negotiated changes or amendments thereto, in accordance with accepted professional practices. The Contractor shall also maintain and make available the financial information and data used by it in the preparation or support of any cost submission or cost, price or profit analysis required by the State of Texas under this Contract or any negotiated sub contract or change order and a copy of the cost summary submitted to OOG. The State of Texas, through any of its duly authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of review, inspection, copying, and/or audit. All such information shall be handled by the parties in accordance with good business ethics. The Contractor shall provide proper facilities within the State of Texas for such access and inspection. Contractor shall also follow procedures developed by OOG's audit staff.
- b. The Contractor agrees to include A.3.11 in all its contracts and all subcontracts there under and all change orders directly related to project performance.
- c. The Contractor agrees to the disclosure of all information and reports resulting from access to records

pursuant to A.3.11 above to the State of Texas. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

- d. Records under A.3.11 above shall be maintained and made available during the entire performance period of this Contract and until four (4) years from date of final OOG payment for the services provided under this Contract. In addition, those records which relate to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until completion of such action and resolution of all issues which arise from it, or until the end of the aforementioned four (4) year period, whichever is later.
- e. Access to records is not limited to the required retention periods. The authorized representatives designated in A.3.11 shall have access to records at any reasonable time for as long as the records are maintained.
- f. The right of access applies to financial records pertaining to all subcontracts and all subcontract change orders and amendments. In addition, this right of access to all records pertains to all subcontracts, subcontract change orders and subcontract amendments, to the extent the records reasonably relate to subcontractor performance, if there is any indication that fraud, gross abuse, or corrupt practices may be involved; or if the subcontract is terminated for default or for convenience.
- g. OOG reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records kept by the Contractor on work performed under this Contract. Reimbursement must be made within thirty (30) business days after receipt of an itemized written request from OOG.
- h. The Contractor shall allow such access to the work product it has created for OOG hereunder as may be necessary to enable any new OOG Contractor of Accountability and Advertising Effectiveness Research to accomplish a smooth transition to the new Contractor.

A.4 ADDITIONAL GENERAL TERMS AND CONDITIONS

A.4.1 Remedies, Venue

Notwithstanding any other terms in this Contract, or any exhibits or addenda hereto, or any other documents included in this Contract, all claims, counterclaims, disputes, and other matters in question between OOG and the Contractor arising out of or relating to the Contract or the breach thereof, will be decided in a court of competent jurisdiction in the City of Austin, Travis County, Texas. The parties may agree to submit such claims, counterclaims, disputes, and other matters in question to arbitration or mediation, but only by mutual written contract.

A.4.2 Licenses, Permits and Laws

The Contractor warrants and covenants that it has obtained all permits, approvals, and licenses, necessary for its lawful performance of its obligations under this Contract, without costs to OOG. The Contractor shall maintain such licenses during the term of this Contract without additional expense to OOG. The Contractor shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with the work required by this Contract.

A.4.3 Political Activity

None of the activities or performances rendered hereunder by the Contractor shall involve lobbying or political

activity, including but not limited to, any activity to further the election or defeat of any candidate for public office, or any activity undertaken to influence the passage, defeat, or final contents of legislation.

A.4.4 Sectarian Activity

None of the activities or performances rendered hereunder by the Contractor shall involve any sectarian or religious activity.

A.4.5 Americans with Disabilities Act

Contractor shall provide reasonable accessibility for persons with disabilities in compliance with the Americans with Disabilities Act, where applicable.

A.4.6 Proprietary Right/Copyright

Contractor shall not assert rights at common law or in equity or establish any claim to statutory copyright in any material or information developed in performance of the Contract. OOG shall have the right to use, copyright, reproduce, publish, or distribute any or all of such information and other materials without the necessity of obtaining any permission from Contractor and without expense or charge.

A.4.7 Patent, Trademark, Copyright and Other Infringement Claims

Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify OOG of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without OOG prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsels, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

A.4.8 Ownership of Documents

All work performed under this Contract shall become the property of OOG. All property rights, including publication rights, to all products developed under this Contract shall be retained by OOG. The Contractor shall ensure duplication and duplication rights are secured to OOG from all contracts and subcontractors, prior to delivery of products to OOG. OOG reserves the right to authorize others to use, publish, or reproduce products developed hereunder. The Contractor agrees to hold OOG harmless for claims that may arise for infringement related to work under this Contract. As this Contract is terminating, the Contractor shall work cooperatively with OOG and any new Contractor to which OOG may award its Accountability and Advertising Effectiveness Research contract in the future so that there is a smooth transition to the new Contractor. Contractor's failure to secure all required duplication and duplication rights to OOG from all contracts and subcontracts, prior to delivery of products, shall be grounds for termination of the Contract, for reason of default, in accordance with Section A.1.4.b.

A.4.9 Intellectual Property

- a. Intellectual property includes any discovery or invention for which patent rights may be acquired, any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and any other materials in which intellectual property rights may be obtained.
- b. OOG shall be the sole owner of intellectual property developed under this contract. OOG hereby reserves the exclusive right to use, publish, or reproduce the intellectual property for sales or otherwise, and to authorize others to do so.
- c. Contractor shall take such steps as are necessary to perfect and to protect OOG's intellectual property rights and all products developed hereunder by the Contractor and its subcontractors. If the Contractor conceives of, puts into practice, discovers, invents, or produces any intellectual property during the course of its work under this Contract, it shall report that fact to OOG.
- d. In performing work under this Contract, the Contractor shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third-party's intellectual property rights. Contractor shall indemnify and hold OOG harmless for and against any claims for infringement related to its work under this Contract.
- e. The Contractor shall include provisions adequate to effectuate the purposes of this Article in all subcontracts under this Contract in the course of which intellectual property may be produced or acquired. Such provisions shall make it clear that any intellectual property created under such subcontracts belongs solely to OOG.

A.4.10 Data and Publicity

- a. The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any parties other than OOG and the State of Texas through its authorized agents except as otherwise provided by this Contract or after obtaining the prior written approval of OOG.
- b. The Contractor agrees to notify and obtain the written approval of OOG prior to releasing any information to the news media regarding the activities being conducted under this Contract.
- c. The OOG, the Texas Legislature, and any other State agency may, at the OOG's discretion, distribute any report prepared by the Contractor or post any report to an agency website or website of a standing committee of the legislature.

A.4.11 Change of Name

The Contractor shall promptly notify OOG of any change of name in which it holds this Contract. An Addendum to this Contract shall be required upon a change of name which shall specifically state that no other terms or conditions of this Contract are thereby changed. The Contractor shall not assign this Contract pursuant to this Article.

A.4.12 Governing Law

The Contract shall be governed, construed and interpreted under the laws of the State of Texas.

A.4.13 Bankruptcy

Should the Contractor become insolvent, or if the proceedings in bankruptcy should be instituted by or against the Contractor, the remaining or unexpired portion of the Contract shall, at the election of OOG, be terminated.

A.4.14 Contractor and Subcontractor Responsibilities

The Contractor and any subcontractor hired to provide electronic services shall provide OOG a signed affidavit and provide relevant documentation that work will not be performed on or for businesses with websites whose content is adult-oriented. Contractor and subcontractor shall also agree in writing that the OOG may conduct random, unannounced on-site audits of it to ascertain whether it does perform work on or for adult websites. Further, Contractor and subcontractor performing work for the OOG after the date of this Contract shall agree in writing to perform its services for OOG and its other clients in a legal and non-fraudulent manner. Contractor and subcontractor shall not conduct any marketing or promotional activity for OOG that places illegal gambling, drinking, prostitution or drug use in a favorable light.

A.5 CONTRACT INFORMATION

A.5.1 Amending the Contract

Any alterations, additions, or deletions in the terms and conditions of the Contract shall be by written amendment executed by both Parties and put into effect with a Contract Amendment issued by OOG. The Contractor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

A.5.2 Terminating the Contract

A.5.2.1 Change in Federal or State Requirements

If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either OOG or Contractor cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under the Contract.

A.5.2.2 Survival of Terms

Termination of the Contract for any reason shall not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

A.6 CONTRACT MANAGEMENT

A.6.1 Contract Managers

A.6.1.1 OOG Contract Manager

OOG Contract Manager has the authority to:

- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews

- approve invoices
- coordinate meetings with the Respondent
- investigate complaints

OOG Contract Manager shall have no authority to agree to any:

- Contract amendment
- pricing change

A.6.1.2 Contractor's Contract Manager

Contractor shall identify its Contract Manager to OOG in writing within 10 days of the issuance of the Purchase Order. Changes to Contractor's Contract Manager shall hereafter be documented by Contractor through Controlled Correspondence. Contractor's Contract Manager has the authority to:

- make decisions regarding the deliverables required by the Contract
- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews
- coordinate meetings with OOG
- investigate complaints

A.6.2 Controlled Correspondence

In order to track and document requests for decisions and/or information pertaining to the Contract, and the subsequent response to those requests, OOG and Contractor shall use Controlled Correspondence. OOG shall manage the Controlled Correspondence for the Contract. For each Controlled Correspondence document, OOG shall assign a tracking number and the document shall be signed by the appropriate Party's Contract Manager.

Controlled Correspondence shall not be used to change pricing or alter the terms of the Contract. Controlled Correspondence shall not be the basis of a claim for equitable adjustment of pricing. Any changes that involve the pricing or the terms of the Contract must be by a properly executed Contract amendment. However, the Controlled Correspondence process may be used to document refinements and interpretations of the provisions of the Contract, to document the cost impacts of proposed changes.

Controlled Correspondence documents shall be maintained by both Parties in ongoing logs and shall become part of the normal status reporting process. Any communication not generated in accordance with such process shall not be binding upon the Parties and shall be of no effect.

A.6.3 Notices and Liaisons

A.6.3.1 Delivery of Written Notices

Any notice required or permitted to be given under the Contract by one Party to the other Party shall be in writing and shall be addressed to the receiving Party at the address hereinafter specified. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address hereinafter specified. It shall be deemed to have been given on the date of certified receipt, if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving Party at the address hereinafter specified.

A.6.3.2 Notice to Contractor

Within 10 days of the issuance of the Purchase Order, Contractor shall identify in writing to OOG the address and contact person for all notices. If there is any change to this information during the term of the Contract, Contractor shall notify OOG by Controlled Correspondence.

A.6.3.3 Notice to OOG

OOG's address for all purposes, (registered or certified mail with return receipt is not required for copies), under this Contract and for all notices hereunder shall be:

Office of the Governor
P. O. Box 12428 (physical address: 1100 San Jacinto Blvd)
Austin, Texas 78711-2428 (physical: 78701)

A.6.4 Subcontracting Approval

In the event that Contractor should determine that it is necessary or expedient to execute additional or alternative subcontracts for any of the performances under the Contract, Contractor shall submit a revised Subcontracting Plan for prior approval before executing any subcontracts. Contractor shall also transmit to OOG for review and prior OOG approval a true copy of the subcontract it proposes to execute with a subcontractor.

Contractor, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontract(s), OOG is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of the RFP and Contract.

A.6.5 No Implied Authority

Any authority delegated to Contractor by OOG is limited to the terms of the Contract. Contractor shall not rely upon implied authority and specifically is not delegated authority under the Contract to: (1) make public policy; (2) promulgate, amend, or disregard OOG program policy; or (3) unilaterally communicate or negotiate, on behalf of OOG, with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency.

A.6.6 Cooperation with OOG

Contractor must ensure that it cooperates with OOG and other state or federal administrative agencies, at no charge to OOG, for purposes relating to the administration of the Contract. Contractor agrees to reasonably cooperate with and work with OOG's contractors, subcontractors, and third party representatives as requested by OOG.

A.6.7 Dispute Resolution

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by OOG and Contractor to attempt to resolve any claim for breach of contract asserted by Contractor. If Contractor's claim for breach of contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the Executive Director of the Economic Development and Tourism Division at OOG or his designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by OOG if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by OOG nor any other conduct of any representative of OOG relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, OOG and Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by OOG and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless OOG, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, OOG and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that OOG and Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. OOG's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by OOG of (1) any rights, privileges, defenses, remedies or immunities available to OOG as an agency of the State of Texas or otherwise available to OOG; (2) OOG's termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by OOG, Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code §2251.051 and such suspension of performance is expressly applicable and authorized under that law.

A.6.8 Fraud, Waste, and Abuse

Contractor represents and warrants that it has read and understood and shall comply with OOG's Anti-Fraud Policy, found at: <http://www.window.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

A.6.9 Renegotiation of Price

OOG shall monitor market prices and prices paid by other states for substantially similar goods and services during the term of the Contract. If OOG determines that substantially similar goods and services are selling for meaningfully lower prices than the prices established in the Contract, OOG may initiate price renegotiations with Contractor and amend the Contract to reflect a new, lower price, if agreed to by the Parties.

A.6.10 Name Changes and Sales

If Contractor changes its name or is sold to another entity, it must notify OOG through Controlled Correspondence. Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to OOG, if resumes were originally required by the RFP. OOG may request other information about the change and its impact on the Contract and Contractor shall supply the requested information within five (5) working days of receipt of the request.

OOG may terminate the Contract due to a sale of or change to Contractor that materially alters Contractor's ability to perform under the Contract. OOG has the sole discretion to determine if termination is appropriate.

A.6.11 News Releases

OOG does not endorse any vendor, commodity, or service. News releases pertaining to this transaction and/or advertisements, publications, declarations and any other pronouncements by Contractor using any means or media mentioning the State of Texas or OOG must be approved in writing by OOG prior to public dissemination.

A.7 CONFIDENTIALITY AND SECURITY

Contractor should not receive any sensitive or confidential information under the Contract. Any information Contractor compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Security and Confidentiality Article shall survive this Contract and shall be included in all subcontracts.

A.8 ADDITIONAL TERMS AND CONDITIONS

A.8.1 Affirmations

Submitting a Proposal with a false statement is a material breach of contract and shall void the Proposal or the Contract, and Contractor shall be removed from all bid lists. By signature thereon affixed, Contractor thereby certifies that:

A.8.1.1 Contractor has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted response. Violation of this requirement may result in the termination of the Contract at the discretion of OOG.

A.8.1.2 OOG is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to OOG under this Contract constituting a record under the Act is received by OOG, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes OOG to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If OOG does not have a good faith belief that information may be subject to an exception to disclosure, OOG is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability OOG, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

A.8.1.3 Contractor shall promptly notify OOG in the event that any representations and warranties provided in this Contract are no longer true and correct. Contractor acknowledges that all of its representations and warranties contained in any part of its Proposal and this Contract are material and have been relied upon by OOG in selecting Contractor for the award of the Contract. Further, Contractor warrants and represents that all of its statements and representations made to OOG prior to being awarded the Contract, and those made during the negotiation of this Contract, are material, true and correct.

A.8.2 Civil Rights

Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

A.8.3 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

OOG is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS), <http://www.epls.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

A.8.4 Environmental Protection

Contractor shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

A.8.5 Certifications

A.8.5.1 Child Support Obligations

Under §231.006, Texas Family Code, (relating to child support) Contractor, by submitting its Proposal, certifies that it is not ineligible to receive a payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

A.8.5.2 Texas Corporate Franchise Tax Certification

Contractor, by submitting its Proposal, certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

A.8.5.3 Certification Concerning Dealings with Public Servants

Contractor, by submitting its Proposal, certifies that it has not given and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this transaction.

A.8.5.4 Certification Concerning Financial Participation

Pursuant to Texas Government Code §2155.004, Contractor certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

A.8.5.5 Certification Concerning Hurricane Relief

Sections 2155.006 and 2261.053, Government Code, prohibit OOG from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code §418.004, occurring after September 24, 2005. Under Texas Government Code §2155.006, Contractor certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

A.8.6 Independent Contractor

The Contract shall not render Contractor an employee, officer, or agent of OOG for any purpose. Contractor is and shall remain an independent Contractor in relationship to OOG. OOG shall not be responsible for withholding taxes from payments made under the Contract. Contractor shall have no claim against OOG for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

A.8.7 No Assignment by Contractor

Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from OOG.

A.8.8 Indemnification and Liability

Contractor shall defend, indemnify, and hold harmless the State of Texas, its officers, and employees, and OOG, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution or performance of the Contract. Contractor shall coordinate its defense with the Texas Attorney General as requested by OOG.

This section is not intended to and shall not be construed to require Contractor to indemnify or hold harmless the State of Texas or OOG for any claims or liabilities resulting from the negligent acts or omissions of OOG or its employees.

A.8.9 Contractor Liability for Damage to Government Property

Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage

company, in connection with any performance pursuant to the Contract. Contractor shall notify OOG Contract Manager in writing of any such damage within one (1) calendar day.

A.8.10 Force Majeure

OOG and Contractor shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of OOG.

In the event of an occurrence under this Section, Contractor will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and Contractor continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Contractor shall immediately notify OOG Contract Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

A.8.11 Buy Texas

In accordance with Texas Government Code §2155.4441, Contractor shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

A.8.12 Miscellaneous Terms and Conditions

A.8.12.1 Permits

Contractor shall be responsible, at Contractor's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.

A.8.12.2 Electrical Items

All electrical items provided by Contractor to OOG or a Customer under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

A.8.12.3 Executive Head

Pursuant to Texas Government Code §669.003, OOG may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. Contractor certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.

A.8.12.4 Terminated Contracts

Contractor certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If Contractor does have such a terminated contract, Contractor shall identify each and provide an explanation for the termination.

A.8.13 Non-Waiver of Rights

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or

otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

A.8.14 No Waiver of Sovereign Immunity

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by OOG or the State of Texas of any immunities from suit or from liability that OOG or the state may have by operation of law.

A.8.15 Severability

If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

A.8.16 Dealing with Public Servants

Contractor must comply with all applicable laws, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) Texas Penal Code §36.09, which prohibits the offering or conferring of benefits to public servants; (iii) Texas Government Code §2155.003, which prohibits the chief clerk or any other employee of OOG from having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

A.8.17 Insurance and Other Security

Contractor represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities there under. Contractor shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with Texas statutory requirements and also cover any cargo being delivered to Customers.

Contractor represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. Contractor shall furnish proof of insurance upon request of a Customer or OOG.

A.8.18 Deceptive Trade Practices; Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

A.8.19 Immigration

Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract.

A.8.20 Federal, State, and Local Requirements

Contractor shall demonstrate onsite compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

A.8.21 Felony Criminal Convictions

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised OOG as to the facts and circumstances surrounding the conviction.

A.8.22 Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institutions of Higher Education Purchases Only)

a. Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

b. Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

A.8.23 Contract Documentation and Attachments

a. The following documents are hereby attached to and incorporated as terms and conditions of performance under this Contract:

Attachment A, Request for Proposals No. 300-4-0001 and
Attachment B, Contractor's Proposal and subsequent clarification.

b. The terms of this Contract and any amendments shall prevail over any other document that governs the performance of the Parties. In the event of a conflict regarding the interpretation of terms related to the performance of OOG or Contractor, the order of precedence shall be the following: the Contract and any

amendments; the Request for Proposals; and Contractor's proposal and any subsequent clarification.

[Rest of page intentionally left blank. Signature page follows.]

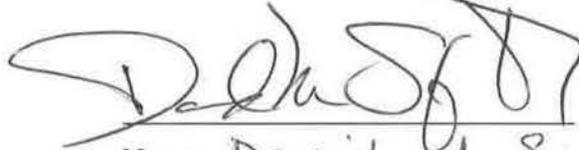
IN WITNESS WHEREOF, the Parties have executed this Contract as of the effective date stated above.

OFFICE OF THE GOVERNOR

STRATEGIC MARKETING & RESEARCH, INC.



KATHY WALT
CHIEF OF STAFF



NAME David M. Seiferth
TITLE Executive VP

APPROVED AS TO FORM:



ASSISTANT GENERAL COUNSEL

**THIRD AMENDMENT
TO
CONTRACT FOR RESEARCH SERVICES TO PROVIDE
ADVERTISING EFFECTIVENESS AND ACCOUNTABILITY RESEARCH
BETWEEN
STRATEGIC MARKETING AND RESEARCH INSIGHTS, LLC,
AND THE
OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM**

THIS THIRD AMENDMENT to the Contract for Research Services to Provide Advertising Effectiveness and Accountability Research ("Third Amendment") is made and entered into by and between the Office of the Governor, Economic Development and Tourism Office, hereinafter referred to as "OOG," and Strategic Marketing and Research Insights, LLC. (Formerly Strategic Marketing and Research, Inc.), hereinafter referred to as "Contractor." OOG and Contractor are hereinafter referred to collectively as the "Parties."

INDUCEMENTS

WHEREAS, the OOG and Contractor agreed to and executed a Contract for Research Services to Provide Advertising Effectiveness and Accountability Research, hereinafter referred to as the "Original Contract," for the initial contract period of September 1, 2013 through August 31, 2015; and

WHEREAS, the Original Contract was previously amended twice to increase the contract total; and

WHEREAS, the Contractor changed its corporate name to Strategic Marketing and Research Insights, LLC effective January 1, 2014, requiring a contract amendment pursuant to Section A.4.11 (Change of Name) and Section A.6.10 (Name Changes and Sales) of the Original Contract; and

WHEREAS, the OOG intends that the Original Contract be renewed for an additional 12 months to cover the period from September 1, 2015 through August 31, 2016 with a corresponding increase in the contract total; and

WHEREAS the Parties intend to create a new contract consisting of the provisions of this Third Amendment and the remaining unchanged provisions of the Original Contract as previously amended.

NOW THEREFORE, in consideration of the mutual the inducements, mutual covenants and conditions herein, the Parties agree as follows:

SECTION 1. CHANGE OF CONTRACT TERM

1.1 Contract Term. The Parties agree to amend the Original Contract, Section A.1.2, Term of the Contract, to read as follows:

Section A.1.2. Term of the Contract.

The term of contract shall be September 1, 2013 through August 31, 2016, with the First Performance Period being September 1, 2013 through August 31, 2015, and the Second Performance Period being September 1, 2015 through August 31, 2016, subject to the renewal and extension periods as described in Section A.1.4.

SECTION 2. CHANGE OF RENEWAL OPTIONS

2.1 Contract Renewals. The Parties agree to amend the Original Contract, Section A.1.4, Renewal and Extension Options, Subsection (a), Contract Renewals, to read as follows:

- a. **Contract Renewals** – The Contract may be renewed for up to two (2) additional twelve-month periods provided both parties agree in writing to do so, prior to the expiration date.
 1. Subject to the availability of funds, OOG and the Contractor may mutually agree to renew the performance period of the Contract by extending the expiration date for a maximum renewal of two (2) additional twelve-month periods. OOG will exercise its option to renew the performance period by providing the Contractor with a written advance notice of intent to renew the performance period of the Contract.
 2. Any optional performance period will be limited as specified above, and shall include the same services, including any amendments, as required in the previous performance period. Unit prices for services provided during any optional performance period shall not exceed those quoted for the optional performance periods by the Contractor in their original proposal.

SECTION 3. CHANGE OF CONTRACT TOTAL

3.1 Contract Total. The Parties agree to amend the Original Contract, Section A.3.1, Contract Total, to read as follows:

Section A.3.1. Contract Total.

- a. The total payments during the First Period of Performance of this Contract (September 1, 2013 through August 31, 2015) shall not exceed the sum of the amount of Three Hundred Twenty-Four Thousand Four Hundred Dollars (\$324,400).
- b. The total payments during the Second Period of Performance of this Contract (September 1, 2015 through August 31, 2016) shall not exceed the sum of the amount of One Hundred Sixty-Seven Thousand Two Hundred Fifty Dollars (\$167,250). The monthly service fee during the Second Period of Performance shall not exceed Ten Thousand Five Hundred Dollars (\$10,500) per month.

- c. Any increase(s) in the contract amount for any given performance period as a result of increases in funding shall require an amendment to the Contract pursuant to Section A.1.5, which will specify the new line item amount and contract total.

SECTION 4. CHANGE OF LEGAL NAME

4.1 Change of Legal Name. The Contract is amended by substituting Contractor's former name, Strategic Marketing and Research, Inc., with Contractor's new legal name, Strategic Marketing and Research Insights, LLC, wherever it appears in the Contract.

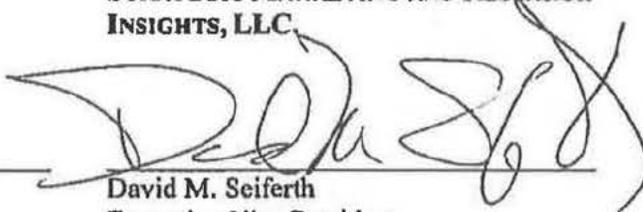
4.2 Ratification of Original Contract. Strategic Marketing and Research Insights, LLC, by its execution of this Third Amendment to the Contract for Research Services to Provide Advertising Effectiveness and Accountability Research, hereby ratifies the Original Contract as amended and all transactions with OOG effected prior to the date of this Third Amendment. The Contractor further certifies and agrees that the rights and obligations of Parties in respect thereto are unaffected by the change of legal name, and shall be governed by the terms of the Original Contract and its terms as amended herein.

SECTION 5. ENTIRE AGREEMENT

The entire agreement between the OOG and Contractor consists of the provisions of this Third Amendment and the remaining unchanged provisions of the Original Contract. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied in this contract. To the extent of any conflict between this Third Amendment and the Original Contract or any prior amendment(s), the terms of this Third Amendment control and supersede over any prior or contemporaneous understandings, agreements, promises, representations, terms and conditions.

OFFICE OF THE GOVERNOR

**STRATEGIC MARKETING AND RESEARCH
INSIGHTS, LLC**



Chief of Staff or Designee

David M. Seiferth
~~Executive Vice~~ President

Date: _____

Date: 8-11-2015 _____