

**CONTRACT  
BETWEEN  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
AND  
DLT SOLUTIONS, LLC  
FOR  
RED HAT OPENSIFT TECHNICAL SERVICES**

This Contract for Red Hat OpenShift Technical Services (“Contract”) is entered into by and between the Texas Comptroller of Public Accounts, an agency of the State of Texas, with offices located at 111 East 17<sup>th</sup> Street, Austin, Texas 78774 (“CPA”), and DLT Solutions, LLC, with offices located at 2411 Dulles Corner Park, Suite 800, Herndon, Virginia 20171 (“Contractor”). CPA and Contractor may be referred to herein individually as Party or collectively as Parties.

**I. RECITALS**

**WHEREAS**, on March 30, 2020 CPA issued Price Request No. 304-20-0080ATP (“PR 304-20-0080ATP”) to Texas Department of Information Resources (“DIR”) vendors engaged in DIR contracts delivering Red Hat products and services, including Red Hat OpenShift Technical Services;

**WHEREAS**, on April 7, 2020, Contractor submitted its original offer (“Original Offer”), and after negotiations between the Parties, on October 7, 2020, Contractor submitted its best and final Offer (“BAFO”) in response to PR 304-20-0080ATP.

**WHEREAS**, on August 27, 2020, CPA and Red Hat, Inc. (“Red Hat”) executed the Red Hat Enterprise Agreement and Rider between CPA and Red Hat (“Red Hat Enterprise Agreement”), memorializing certain terms and conditions applicable to Red Hat’s products and services, including Red Hat OpenShift products, support, and related services, whether procured directly from Red Hat or through a Red Hat business partner;

**WHEREAS**, Contractor’s BAFO represents that Contractor is a Red Hat business partner and that, in accordance with Contractor’s DIR Contract No. DIR-TSO-4236 (“DIR Contract No. DIR-TSO-4236”), Contractor intends to subcontract to Red Hat the Red Hat OpenShift Technical Services described within PR 304-20-0080ATP (“Services”); and

**WHEREAS**, the Parties desire to memorialize the negotiated terms and conditions of their agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties hereby agree as follows:

**II. SERVICES; CONTRACT DOCUMENTS**

**2.1** Contractor shall provide to CPA all Services described in, and in the manner required by, this Contract and the following documents attached hereto (collectively, “Attachments”) and which are incorporated in and constitute part of the Contract for all purposes as though fully set forth herein:

- Attachment A: Contractor’s BAFO;
- Attachment B: DIR Contract No. DIR-TSO-4236;
- Attachment C: Red Hat Enterprise Agreement; and
- Attachment D: PR 304-20-0080ATP.

**2.2** In event of a conflict, inconsistency, or difference between this Contract and any of the Attachments, the following shall be the order of priority and control:

1. This Contract (without Attachments).
2. Attachment B: DIR Contract No. DIR-TSO-4236.
3. Attachment C: Red Hat Enterprise Agreement.
4. Attachment D: PR 304-20-0080ATP.
5. Attachment A: Contractor’s BAFO.

### III. PERSONNEL

- 3.1. Contractor shall act as an independent contractor in providing services under this Contract. Contractor's employees and any of Contractor's subcontractor's employees shall not be construed as employees of CPA in providing Services under this Contract. Contractor shall be solely responsible to CPA for all performances of Contractor's subcontractors, suppliers, business partners and service providers. CPA shall look solely to Contractor for performance of this Contract. Contractor shall be liable for the performance of all obligations under this Contract, and shall not be relieved of the non-performance of any subcontractor.
- 3.2. Should Contractor designate a subcontractor, supplier, business partner or other service provider to perform any of the Services under this Contract, Contractor expressly understands and acknowledges that in entering into such contract(s) or subcontract(s), CPA is in no manner liable to any service provider of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the Services rendered under all subcontracts or contracts with third parties are rendered in compliance with this Contract.

### IV. CONTRACT AMOUNTS; PAYMENT

- 4.1. Payments shall be made in accordance with Attachment B: DIR Contract No. DIR-TSO-4236.
- 4.2. Payments to Contractor under this Contract shall be in accordance with the rates set forth within Attachment A: Contractor's BAFO and the Mandatory Price Sheet contained therein.
- 4.2.1. The Parties agree CPA may refuse payments for invoices that exceed the rates specified on such Mandatory Price Sheet.
- 4.3. **Submission of Payment Requests.** Contractor shall submit payment requests only upon Contractor's completion of and CPA's acceptance of all work required under one or more Phases defined in Section 7.2.1 of this Contract.
- 4.3.1. For clarity, Contractor shall not invoice for any time or work for:
1. Phase 1 (Design) until Phase 1 (Design) is completed by Contractor and accepted by CPA;
  2. Phase 2 (Deploy) until Phase 2 (Deploy) is completed by Contractor and accepted by CPA; and
  3. Phase 3 (Closeout) until Phase 3 (Closeout) is completed by Contractor and accepted by CPA.
- 4.3.2. Each payment request submitted by Contractor shall include charges only for one or more Phases not previously submitted for payment by Contractor.
- 4.4. Prior to authorizing any invoices for payment under this Contract, CPA shall evaluate Contractor's performance against the requirements of this Contract.
- 4.5. CPA shall not pay any amounts for any purpose to Contractor or any other entity, except as expressly provided for in this Contract. CPA reserves the right to make payments only upon receipt of a correct invoice, including all of the required supporting documentation. CPA may, in its reasonable discretion, require additional documentation to support payment, and Contractor shall respond to any such requests within five (5) days of receipt.
- 4.6. CPA will not reimburse for travel, meals, lodging or other related expenses unless specifically provided for in this Contract. If reimbursement is applicable, CPA shall only be liable for reimbursement of actual expenses. CPA shall not be liable for reimbursement of expenses that (1) were not pre-approved in writing by CPA or (2) exceed the current State of Texas Travel Regulations applicable to state employees.
- 4.7. CPA's payments for authorized Services under this Contract shall be payable solely to Contractor. Contractor shall be solely responsible for all payments to its subcontractors, service providers, suppliers, business partners, financing companies, and similar entities.
- 4.8. Disputes, including but not limited to fees, payments, and default disputes, if any, arising under this Contract shall be resolved in accordance with the dispute resolution process provided in DIR Contract No. DIR-TSO-4236.

## V. TERM; TERMINATION

- 5.1 Contract Term.** The Contract term commences on the date of the last Party's signature to this Contract ("Effective Date") and shall continue through July 31, 2021 ("Contract Term").
- 5.1.1** CPA may, in its sole discretion, extend the Contract Term for up to thirty-one (31) additional calendar days ("Extended Term"). To exercise the option to extend the Contract Term, CPA will provide written notice to Contractor; such notice may be by issuance of CPA's purchase order change notice ("POCN").
- 5.2 Excess Obligations Prohibited.** This Contract is subject to termination or cancellation, without penalty to CPA, either in whole or in part, subject to the availability of state funds. In event of a termination or cancellation under this Section, CPA shall not be liable to Contractor for any damages that are caused by or associated with such termination or cancellation, and CPA shall not be required to give prior notice to Contractor for such termination or cancellation.
- 5.3 Termination for Convenience.** Without limitation on the termination and cancellation provisions within Attachment D: PR 304-20-0080ATP and this Contract and without penalty whatsoever, CPA may, in its sole discretion, and without penalty to CPA or the State of Texas, terminate this Contract on thirty (30) calendar days written notice to Contractor. In the event of such termination or any other termination of this Contract, CPA's sole and maximum obligation shall be to authorize payment to Contractor for its invoice for previously authorized Services, performed by Contractor in accordance with all requirements of this Contract, for Services delivered up to the applicable termination date. CPA shall have no obligation to pay for unauthorized Services performed by Contractor after the termination date. This right of CPA to terminate for its convenience is in addition to the other termination provisions within Attachment D: PR 304-20-0080ATP and under applicable law.
- 5.4 Survival of Terms.** Notwithstanding the termination or expiration of this Contract, certain provisions regarding confidentiality, data safeguard standards, indemnification, payments, records, dispute resolution, and right to audit shall survive the termination or expiration dates of this Contract.

## VI. INDEMNIFICATION

- 6.1** Contractor's indemnification obligations are as specified in Attachment B: DIR Contract No. DIR-TSO-4236 and are hereby incorporated into and constitute part of this Contract.
- 6.2** For the avoidance of doubt, CPA shall not indemnify Contractor or any other entity.

## VII. PROJECT DELIVERY

- 7.1 Performance Period.** For resource planning purposes, the performance period of billable work under this Contract includes the period from the estimated start date of January 15, 2021 ("Estimated Start Date") through end of the Contract Term ("Performance Period"). Though it is anticipated project completion may be realized in a 12-week time-frame, the Parties acknowledge the Performance Period includes time sufficient to accommodate reasonable, known potential delays to the project start date and delays during the Performance Period which may arise as a result of unforeseen outcomes during the project's Phase 1 (Design) which is generally defined in Section 7.2 below.
- 7.1.1** The Services are targeted by CPA for Contractor to deliver a complete project, as more fully described in Attachment A: Contractor's BAFO and Attachment D: PR 304-20-0080ATP, no later than July 31, 2021. The Parties acknowledge that the Estimated Start Date is the best estimated start date for work under this Contract and that the actual start date of the Performance Period is dependent upon CPA's completion and/or readiness of all or part of a separate CPA information technology project that is in progress at time of execution of this Contract.
- 7.1.2** Contractor agrees that CPA's issuance of a Purchase Order ("PO") for Services under this Contract in advance of the Performance Period Estimated Start Date is to allow Contractor and its subcontractor sufficient time to allocate resources, including but not limited to qualified staff, and to ensure such resources are available and ready to commence with Services on the Estimated Start Date.

1. It is presumed the Estimated Start Date shall be the actual start date (“Actual Start Date”) of Contractor’s delivery of Services under the Contract and of the Performance Period unless a revised start date, occurring after the Estimated Start Date, is mutually agreed to by the Parties. In event of a revised start date, such revised start date shall become the Actual Start Date.
2. Contractor is solely responsible for ensuring its readiness to commence Services on the Estimated Start Date.
3. For clarity, Contractor shall not invoice CPA, and CPA shall not pay Contractor, for any of Contractor’s preparation and planning effort, time and materials occurring prior to the Actual Start Date.

**7.2 Milestone Dates.** The Milestone Dates for the project represent completion dates for key phases of work required under this Contract.

**7.2.1 Phases.** Phases 1 and 2 identified in this section represent similarly labeled rows with corresponding tasks in the High-Level Project Plan within Section 2.1.3 of Attachment A: Contractor’s BAFO, and Phase 3 represents tasks and meetings that may be required to conduct project closeout after Contractor’s delivery of the environments described in Section 2.1.2 of Attachment A: Contractor’s BAFO. The Milestone Dates applicable to each Phase are as follows:

- Phase 1 (Design): completed within 4 weeks of Performance Period Actual Start Date;
- Phase 2 (Deploy): completed within 8 weeks of end of Phase 1; and
- Phase 3 (Closeout): completed no later than July 31, 2021.

**7.2.2 Phase Completion and Payment.** For purposes of payment under this Contract, a Phase shall be completed upon CPA’s deeming the Services and any related deliverables for that Phase as accepted in accordance with Section I, Part D.9 (Acceptance Criteria) of Attachment D: PR 304-20-0080ATP. Payments by CPA shall be issued in accordance with Part IV of this Contract.

**7.2.3 Revisions to Milestone Dates.** Any changes, revisions, or modifications to the Milestone Dates identified in Section 7.2.1 shall follow the Change Request process described in Section I, Part D.8.9 (Change Requests) of Attachment D: PR 304-20-0080ATP.

## VIII. LEGAL NOTICES

Any legal notice relating to this Contract, which is required or permitted to be given under this Contract shall be in writing and shall be addressed to the receiving Party at the address specified below. The notice shall be deemed to have been given immediately if delivered in person to the recipient’s address specified below. Notice 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 specified below. Registered or certified mail with return receipt requested is not required for copies. Either Party may change its address for notice by written notice to the other Party as herein provided.

1. CPA: Texas Comptroller of Public Accounts  
ATTN: Contract Section, Operations and Support Legal Services Division  
111 E. 17th Street, Room 201  
Austin, Texas 78774  
*With copy emailed to: [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov)*
2. Contractor: DLT Solutions, LLC  
2411 Dulles Corner Park, Suite 800  
Herndon, Virginia 20171

## IX. GENERAL

8.1 This Contract may be amended only upon written agreement of Contractor and CPA; however, CPA may issue Purchase Order Change Notices for ordering and tracking purposes consistent with this Contract, provided such Purchase Order Change Notices incorporate this Contract.

8.2 This Contract, attachments, exhibits, and appendices contain the entire agreement between Contractor and CPA relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning the Contract shall be of no force or effect unless contained in a subsequent writing, signed by both Parties. This Contract shall not be construed against the Party that has prepared the Contract, but instead shall be construed as if all Parties prepared this Contract. This Contract supersedes any "clickwrap," "shrinkwrap," or other agreement that may accompany software or services provided under this Contract. The headings used in this Contract are for references and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms herein.

**X. SIGNATORIES**

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective Parties named below. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the Parties.

In accordance with Section 2157.0685 of the Texas Government Code, this Contract executed between Contractor and Customer is not valid and money may not be paid to Contractor unless the Texas Department of Information Resources approves and executes this Contract.

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**

**DLT SOLUTIONS, LLC**

Signed: *Lisa Craven*  
Name: Lisa Craven  
Title: Deputy Comptroller  
Date: 11/7/2020 | 7:39 AM CST

Signed: *Andre L van der Post*  
Name: Andre L van der Post  
Title: VP Sales  
Date: 10/23/2020

**Approved by:  
TEXAS DEPARTMENT OF INFORMATION RESOURCES**

SOW ID # CPA-000047  
Signed: *Hershel Becker*  
Name: Hershel Becker  
Title: Chief Procurement Officer  
Date: 11/18/2020 | 12:52 PM CST

## **ATTACHMENT A: CONTRACTOR'S BEST AND FINAL OFFER**

Contractor's best and final Offer ("BAFO") submitted October 7, 2020 in response to PR 304-20-0080ATP is incorporated by reference into the Contract as Attachment A.

**ATTACHMENT B: DIR CONTRAC NO. DIR-TSO-4236**

Contractor's DIR Contract No. DIR-TSO-4236 is incorporated by reference into the Contract as Attachment B.

## **ATTACHMENT C: RED HAT ENTERPRISE AGREEMENT**

The Red Hat Enterprise Agreement and Rider between CPA and Red Hat Inc., executed August 27, 2020 is incorporated by reference into the Contract as Attachment C.



**ATTACHMENT D: PR 304-20-0080ATP**

CPA's Price Request No. 304-20-0080ATP issued on March 30, 2020 ("PR 304-20-0080ATP") is incorporated by reference into the Contract as Attachment D.