

**CONTRACT FOR  
ONLINE HUB REGISTRATION AND PROFILE MANAGEMENT SYSTEM LICENSED SOFTWARE AND  
RELATED SERVICES  
BETWEEN  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS AND  
ASKREPLY, INC./DBA B2GNOW**

This Contract for Online HUB Registration and Profile Management Licensed Software and Related Services (“Contract”) is entered into by and between the Texas Comptroller of Public Accounts (“CPA”), an agency of the State of Texas, with offices located at 111 East 17<sup>th</sup> Street, Austin, Texas 78774, and AskReply, Inc./dba B2Gnow (“Contractor”), with offices located at One Dell Way, Round Rock, Texas 78682.

**I. Recitals**

**Whereas**, CPA issued Price Request No. 304-20-0900MH on March 25, 2020;

**Whereas**, CPA’s Price Request No. 304-20-0900MH was amended by Addendum No. 1 issued by CPA on April 13, 2020;

**Whereas**, Contractor submitted an offer dated April 27, 2020, including Appendix I (Additional B2Gnow Information) in response to CPA’s Price Request No. 304-20-0900MH;

**Whereas**, Contractor submitted a Second Revised Best and Final Offer to CPA dated July 15, 2020; and

**Whereas**, the parties desire to memorialize the negotiated terms and conditions of the agreement and to specify the order of priority of the contract documents.

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

**II. Services and Performance**

- 2.1 Contractor shall provide to CPA all of the services and other deliverables (“Services”) as described in and in the manner required by all of the following documents as requested by CPA:
- This Contract (without Attachments);
  - Attachment A: Contractor’s Second Revised Best and Final Offer dated July 15, 2020 (“Price Sheet”);
  - Attachment B: CPA’s Price Request No. 304-20-0900MH issued on March 25, 2020, and Addendum No. 1 to CPA’s Price Request No. 304-20-0900MH issued on April 13, 2020 (collectively, “CPA’s PR”);
  - Attachment C: Contractor’s offer dated April 27, 2020, including Appendix I (Additional B2Gnow Information), submitted in response to CPA’s PR (collectively, “Contractor’s Offer”);
  - Attachment D: Contractor’s DIR Contract No. DIR-TSO-4212;
  - Attachment E: Software Service Agreement between AskReply, Inc./dba B2Gnow and CPA signed contemporaneously with this Contract by CPA (“B2Gnow SSA”).

All of the above documents are attached to and incorporated as part of this Contract for all purposes.

- 2.2 In the case of conflicts between this Contract (without Attachments) and any of the following Attachments, the following shall control in the following order of priority:

1. Attachment D: Contractor’s DIR Contract No. DIR-TSO-4212.
2. This Contract (without Attachments).
3. Attachment E: B2Gnow SSA
4. Attachment A: Price Sheet.
5. Attachment B: CPA’s PR.
6. Attachment C: Contractor’s Offer.

- 2.3 Technical Services and Service.
- A. Contractor shall provide licenses for B2Gnow Technology and System as specified in Attachment A (Price Sheet) of this Contract. The B2Gnow Technology and System shall include the following:
    - 1) Implementation Services Phase 1 to include the following: (i) Implementation Strategy and Anticipated Timeline; (ii) Project Management Services; (iii) Design Validation Services
    - 2) Implementation Services Phase 2 to include the following: (i) Project Management Services; (ii) Design Validation Services Installation and Configuration Services
    - 3) Implementation Services Phase 3 to include the following: (i) Integration Services; (ii) Data Migration Services; (iii) Testing, and Deployment Services; (iv) Knowledge Transfer Services.
    - 4) Formal Training Services
    - 5) Licensed Software and Software Maintenance and Technical Support including the specified environments and data storage requirements set forth in Section I, Part D.2 (Functional and Technical Requirements) of Attachment B: CPA's PR.
    - 6) Import, Export, and SAML 2.0 single sign-on interfaces, including maintenance and configuration of SAML 2.0 single sign-on connection, included with implementation services.
  - B. Contractor shall provide Statement of Work services as described in Attachment B: Contractor's Offer, including, but not limited to, the services delineated from pages 19 through 33.
  - C. The terms of Attachment E: B2Gnow SSA shall govern CPA's use of the B2Gnow Technology and System. Appendix F (Service Level Agreement) of Attachment E: B2Gnow SSA shall govern service levels and applicable service level credits for the B2Gnow Technology and System.
- 2.4 Implementation Services. Contractor shall provide the Implementation Services as specified on pages 41 through 68 in Attachment C: Contractor's Offer.
- 2.5 Training Services. Contractor shall provide Formal Training Services as specified on pages 69 through 70 in Attachment C: Contractor's Offer.
- 2.6 All capitalized terms not otherwise defined in this Contract shall have the meanings set forth in Attachment B (CPA's PR), as applicable.
- 2.7 Contractor represents and warrants that it has the requisite qualifications, experience, personnel, and other resources to provide all of the required Services to CPA in the manner required by this Contract.
- 2.8 Contractor understands that this Contract is not exclusive, and that CPA may issue additional solicitations and award additional contracts for the Services at any time. CPA makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products or services will be procured through this Contract.

### III. Personnel

- 3.1 Contractor shall act as an independent contractor in providing services under this Contract. Contractor'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 are rendered in compliance with this Contract.

### IV. Contract Amounts; Payments

- 4.1 Payments shall be made in accordance with Attachment D: Contractor's DIR Contract No. DIR-TSO-4212 of this Contract.

- 4.2 Payments to Contractor under this Contract shall not exceed the rates and shall be in accordance with the Price Sheet set forth in Attachment A of this Contract. CPA reserves the right to refuse payments for invoices that exceed the rates specified in Attachment A of this Contract.
- 4.3 Prior to authorizing any invoices for payment under this Contract, CPA shall evaluate Contractor's performance against the requirements of this Contract.
- 4.4 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.
- 4.5 CPA will not reimburse for travel, meals, lodging or other related expenses unless specifically provided for in this Contract. 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.
- 4.6 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.

#### **V. Term; Termination**

- 5.1 The initial term of this Contract shall commence on the date of the last signature below (the "Effective Date") and shall continue until August 12, 2021. CPA may in its sole discretion exercise the option to extend the contract for up to three (3) additional twelve (12) month periods. To exercise the option to extend the term, CPA will provide written notice to Contractor; such notice may be by purchase order issuance.
- 5.2 This Contract is subject to termination or cancellation, without penalty to CPA, either in whole or in part, subject to the availability of funds.
- 5.3 Without limitation on the termination and cancellation provisions of Attachment B (CPA's PR) and this Contract, CPA may also, 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 the month up to the termination date. CPA shall have no obligation to pay for months after the termination date. This right of CPA to terminate for its convenience is in addition to the other termination provisions Attachment B (CPA's PR) and under applicable law.
- 5.4 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 Contractor's DIR Contract No. DIR-TSO-4212 and are hereby incorporated into this Contract.
- 6.2 For the avoidance of doubt, CPA shall not indemnify Contractor or any other entity.

## VII. RETAINAGE; MILESTONES; LIQUIDATED DAMAGES

### 7.1 Retainage Amounts

- 7.1.1 When CPA makes payments to Contractor for the 3 Implementation Phases described in Table 1 (Implementation Services) of Attachment A: Price Sheet, Contractor agrees that CPA will hold back ten percent (10%) of the price for each Phase. For the avoidance of doubt, the total retainage amount for the 3 Phases is 7,995.00..
- 7.1.2 Contractor agrees that CPA will retain the total retainage amount of \$7,995.00 (the "Retainage Amount") until CPA determines the amount to be returned after Liquidated Damages, if any, are assessed pursuant to this Contract. Section 7.3 of this Contract sets forth the terms for the return of the Retainage Amount to Contractor.

### 7.2 Major Milestone Dates

- 7.2.1 The Major Milestone Dates for the Project are as follows:
- Phase 1 Completion Date: On or before December 1, 2020;
  - Phase 2 Completion Date: On or before March 1, 2021; and
  - Phase 3 Completion Date: On or before May 21, 2021.
- 7.2.2 For purposes of this Section 7.2, the following definitions apply:
- (1) A Phase is "Completed" by Contractor when CPA accepts the deliverable in accordance with Section H.1) (Testing Services) of CPA's PR.
  - (2) System Go-Live of Phase 3 is "Completed" when all of the System is first available for use by CPA in an operational, non-test environment, utilizing production data.
- 7.2.3 Any revisions to the Major Milestone Date requirements identified in Section 7.2.2 shall follow the Change Request process described in Section B.2) h) (Change Requests) of CPA's PR.
- 7.2.4 Phase 1 Completion Date Requirements. Contractor shall complete all of the following Services on or before the Phase 1 Completion Date:
- (1) Project Kickoff Presentation;
  - (2) Draft Project Timeline/Schedule and Plan;
  - (3) Project Communication Plan;
  - (4) Risk Management Plan;
  - (5) Business Requirements;
  - (6) Baseline Configuration and Portal
- 7.2.5 Phase 2 Completion Date Requirements. Contractor shall complete all of the following Services on or before the Phase 2 Completion Date:
- (1) Detailed Designed Document & Diagram;
  - (2) Infrastructure Readiness;
  - (3) Test, Training & Security Plan;
  - (4) Business Requirements & Design Document;
  - (5) Integration & Data Migration Plan;
  - (6) User Acceptance Test Plan;
  - (7) Integration Test Plan.
- 7.2.6 Phase 3 Completion Date Requirements. Contractor shall complete all of the following Services on or before the Phase 3 Completion Date:
- (1) Implementation Interfaces;
  - (2) Data Migration;
  - (3) Use Acceptance Test;
  - (4) Integration Test;
  - (5) Cut-over Plan;
  - (6) User Training;
  - (7) System Go-Live;

(8) Final Project Approval.

7.2.7 No liquidated damages will be applied and Contractor will not be in breach or default for failure to meet a Major Milestone Date if (1) the delay arises out of causes beyond the control of Contractor provided that Contractor exercises all reasonable efforts to perform in a timely fashion or (2) the delay is caused by a substantial delay or failure of more than 48 hours by CPA to meet its obligations in a timely fashion; provided that the CPA Project Manager received prompt written notice from Contractor when Contractor became aware that Contractor's ability to meet a Major Milestone Date was likely to be delayed as a result of Force Majeure or a substantial delay or failure of more than 48 hours by CPA to meet its obligations in a timely fashion.

**7.3 Liquidated Damages**

7.4.1 Contractor agrees that the measure of damages in the event of a default or breach by the Contractor to meet the Major Milestone Dates may be difficult to calculate. CPA may impose, but is not obligated to impose, liquidated damages in lieu of monetary damages available to CPA under the Contract or applicable law. If CPA elects to receive liquidated damages, it shall be CPA's sole and exclusive remedy, and Contractor's sole and exclusive obligation, with respect to Contractor's delays under Section 7.4.2 to the extent permitted by the Constitution and laws of the State of Texas.

7.4.2 CPA may impose, as liquidated damages and not as a penalty, the amounts set forth herein in the event that Contractor fails meet a Major Milestone Date. For the avoidance of doubt, Contractor shall not be in default nor breach and shall not be required to pay any liquidated damages if the Contractor's failure is the result, in whole or in part, of any cause or circumstance outside of Contractor's control.

7.4.3 If CPA elects to assess liquidated damages for Contractor's failure to meet a Major Milestone Date, the amount of liquidated damages shall be \$520.00 for each calendar day beyond the scheduled Major Milestone Date of Phase 1, \$460.00 for each calendar day beyond the scheduled Major Milestone Date of Phase 2, and \$619.00 for each calendar day beyond the scheduled Major Milestone Date of Phase 3, and shall end on the date which the CPA provides notice to Contractor that has Contractor completed the applicable Milestone.

**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: AskReply, Inc./dba B2Gnow  
725 W. McDowell Road  
Phoenix, AZ 85007

**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 Agreement executed between Contractor and Customer is not valid and money may not be paid to Contractor unless the Texas Department of Information Resources first signs this Agreement.

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**

**ASKREPLY, INC./DBA B2GNOW**

DocuSigned by:  
By: *Lisa Craven*  
11EA6DEF0EC441E...  
Name: Lisa Craven  
Title: Deputy Comptroller  
Date: 8/21/2020 | 5:12 PM CDT

By: *Frank Beggelke*  
Name: Frank Beggelke  
Title: Chief Operating Officer  
Date: 8/18/2020

**Approved by the Texas Department of Information Resources  
SOW ID # CPA-000045.**

Signature: *Hershel Becker*  
7F04C0B913D547B...  
Name: Hershel Becker  
Title: Chief Procurement Officer  
Date: 8/27/2020 | 5:38 PM CDT

## ATTACHMENT A: PRICE SHEET

Table 1 Implementation Services									
Description	Milestone-Based Line Item Pricing*			Unit of Measure	Initial Term (Date of Award – 8/31/21)	Optional Renewal Terms			
						(9/01/21 – 8/31/22)	(9/01/22 – 8/31/23)	(9/01/23 – 8/31/24)	
1 Implementation Services <b>Phase 1</b> to include the following: <ul style="list-style-type: none"> <li>• Implementation Strategy and Anticipated Timeline</li> <li>• Project Management Services</li> <li>• Design Validation Services</li> </ul>	a	Project Kick-off	\$7,600	1 Job	\$26,000	N/A	N/A	N/A	
	b	Project Plan	\$2,300						
	c	Communication Plan	\$2,300						
	d	Risk Management Plan	\$2,300						
	e	Project Schedule	\$2,300						
	f	Business Requirements	\$2,300						
	g	Baseline Configuration & Portal	\$6,900						
2 Implementation Services <b>Phase 2</b> to include the following: <ul style="list-style-type: none"> <li>• Project Management Services</li> <li>• Design Validation Services Installation and Configuration Services</li> </ul>	h	Detailed Design Document & Diagram	\$2,300	1 Job	\$23,000	N/A	N/A	N/A	
	i	Infrastructure Readiness	\$2,300						
	j	Test Plan	\$2,300						
	k	Training Plan	\$2,300						
	l	Security Plan	\$2,300						
	m	Business Requirements & Design Document	\$2,300						
	n	Integration Plan	\$2,300						
	o	Data Migration Plan	\$2,300						
	p	User Acceptance Test Plan	\$2,300						
q	Integration Test Plan	\$2,300							
3 Implementation Services <b>Phase 3</b> to include the following: <ul style="list-style-type: none"> <li>• Integration Services</li> <li>• Data Migration Services</li> <li>• Testing, and Deployment Services</li> <li>• Knowledge Transfer Services</li> </ul>	r	Implemented Interfaces	\$2,300	1 Job	\$30,950	N/A	N/A	N/A	
	s	Data Migration	\$6,900						
	t	User Acceptance Test	\$2,300						
	u	Integration Test	\$2,300						
	v	Cut-Over Plan	\$2,300						
	w	User Training	\$2,300						
	x	System Go-Live	\$2,300						
y	Final Project Approval	\$10,250							
<b>Total for Price Schedule</b>					\$79,950	\$0	\$0	\$0	

<b>Table 2 Formal Training Services</b>						
<b>Description</b>		<b>Quantity and Unit of Measure</b>	<b>Initial Term (Date of Award – 8/31/21)</b>	<b>Optional Renewal Terms</b>		
				<b>(9/01/21 – 8/31/22)</b>	<b>(9/01/22 – 8/31/23)</b>	<b>(9/01/23 – 8/31/24)</b>
1	Formal Training Services	1 Session	\$0 Included in Implementation Services and Annual Service Fee	\$0 Included in Implementation Services and Annual Service Fee	\$0 Included in Implementation Services and Annual Service Fee	\$0 Included in Implementation Services and Annual Service Fee

<b>Table 3 Licensed Software and Software Maintenance and Technical Support For A SaaS System</b>						
<b>Description</b>		<b>Quantity and Unit of Measure</b>	<b>Initial Term (Date of Award – 8/31/21)</b>	<b>Optional Renewal Terms</b>		
				<b>(9/01/21 – 8/31/22)</b>	<b>(9/01/22 – 8/31/23)</b>	<b>(9/01/23 – 8/31/24)</b>
1	Licensed Software and Software Maintenance and Technical Support including the specified environments and data storage requirements set forth in Section I, Part D.2 (Functional and Technical Requirements)	1 Lot	\$180,538 *	\$200,791	\$204,706	\$208,698
<b>Total for Price Schedule</b>			\$180,538 *	\$200,791	\$204,706	\$208,698

\* Year 1 Annual Fee is pro-rated from October 1, 2020 through August 31, 2021.



**Price Schedule 4**  
**Optional Features, Products, and Services**  
**(Refer to Section I, Part D.8 of the PR)**

	Description	Qty	Unit of Measure	Initial Term (Date of Award – 8/31/21)	Optional Renewal Terms		
					(9/01/21 – 8/31/22)	(9/01/22 – 8/31/23)	(9/01/23 – 8/31/24)
1	Additional User License			No extra cost	No extra cost	No extra cost	No extra cost
2	Additional Hosting Services			No extra cost	No extra cost	No extra cost	No extra cost
3	Additional File Storage			No extra cost	No extra cost	No extra cost	No extra cost
4	Additional Total Storage			No extra cost	No extra cost	No extra cost	No extra cost
5	Supplemental Services – data entry and migration	1	Hour	\$77/hr	\$79/hr	\$82/hr	\$84/hr
6	Supplemental Services – hardcopy document scanning and migration	1	Hour	\$77/hr	\$79/hr	\$82/hr	\$84/hr
7	Supplemental Services – custom reports or system enhancements	1	Hour	\$154/hr	\$159/hr	\$163/hr	\$168/hr
8	Supplemental Services – specialized onsite training	1	Hour/ Trainer	\$154/hr/trainer	\$159/hr/trainer	\$163/hr/trainer	\$168/hr/trainer
9	Supplemental Services – program consulting	1	Hour	\$308/hr	\$317/hr	\$327/hr	\$337/hr
10	Additional 200 active HUB firms	1	Unit	\$10,191/yr	\$10,497/yr	\$10,812/yr	\$11,136/yr
11	Additional 100 outreach campaigns/events	1	Unit	\$5,095/yr	\$5,248/yr	\$5,405/yr	\$5,567/yr
12	Additional B2Gnow Modules (capacities vary): contract compliance, workforce utilization, utilization plans, bid tracking, contract-specific goal setting, bid posting, bidding, insurance management, projects, hire, tier 2 spend reporting, reviews, agency/recipient reporting	1	Unit	\$5,095 setup + \$5,095/yr	\$5,248 setup + \$5,248/yr	\$5,405 setup + \$5,405/yr	\$5,567 setup + \$5,567/yr
13	Additional B2Gnow Modules (capacities vary): Vendor registration/questionnaire, spend analysis	1	Unit	\$10,191 setup + \$5,095/yr	\$10,497 + \$5,248/yr	\$10,812 + \$5,405/yr	\$11,136 + \$5,567/yr
14	Additional B2Gnow Modules: certified payroll/prevailing wage	1	Unit	\$10,191 setup + annual fee based on construction value	\$10,497 setup + annual fee based on construction value	\$10,812 setup + annual fee based on construction value	\$11,136 setup + annual fee based on construction valu
15	Additional System Import Interface	1	Interface	\$5,095 setup + \$2,562/yr	\$5,248 setup + \$2,639/yr	\$5,405 setup + \$2,718/yr	\$5,567 setup + \$2,800/yr
16	Additional System Export Interface	1	Interface	\$5,095 setup + \$2,562/yr	\$5,248 setup + \$2,639/yr	\$5,405 setup + \$2,718/yr	\$5,567 setup + \$2,800/yr
17	Custom Export Interface for HUB directory data	1	Interface	\$5,095 setup + \$2,562/yr	\$5,248 setup + \$2,639/yr	\$5,405 setup + \$2,718/yr	\$5,567 setup + \$2,800/yr
18	Standard Web Service Export API for HUB directory data	1	Interface	\$5,095 setup + \$2,562/yr	\$5,248 setup + \$2,639/yr	\$5,405 setup + \$2,718/yr	\$5,567 setup + \$2,800/yr
19	Reversed						
20	Outbound fax service for system	1	Year	\$1,285/yr	\$1,324/yr	\$1,363/yr	\$1,404/yr

**ATTACHMENT B: CPA's PR**

CPA's Price Request No. 304-20-0900MH issued on March 25, 2020, and Addendum No. 1 to CPA's Price Request No. 304-20-0900MH issued on April 13, 2020 (collectively, "CPA's PR") are incorporated by reference into the Contract as Attachment B.

In the event of conflict between these documents, the following shall control in this order of priority:

1. Addendum No. 1 to CPA's Price Request No. 304-20-0900MH issued on April 13, 2020.
2. CPA's Price Request No. 304-20-0900MH issued on March 25, 2020.

**ATTACHMENT C: CONTRACTOR'S OFFER**

Contractor's offer dated April 27, 2020 submitted in response to CPA's PR and Contractor's revised price sheet dated July 15, 2020 (collectively, "Contractor's Offer") are incorporated by reference into the Contract as Attachment C.

In the event of conflict between these documents, the following shall control in this order of priority:

1. Contractor's Second Revised Best and Final Offer dated July 15, 2020.
2. Contractor's offer dated April 27, 2020, including Appendix I (Additional B2Gnow Information), submitted in response to CPA's PR.

**ATTACHMENT D: CONTRACTOR'S DIR CONTRACT NO. DIR-TSO-4212**

Contractor's DIR Contract No. DIR-TSO-4212 is incorporated by reference into the Contract as Attachment D.

**ATTACHMENT E: B2GNOW SSA**

Software Service Agreement between AskReply, Inc./dba B2Gnow and CPA, signed contemporaneously with this Contract by CPA, is incorporated by reference into the Contract as Attachment E.



**DIR-TS0-4212**

**APPENDIX D**

**Software Service Agreement**



# Software Service Agreement

## B2Gnow SOFTWARE SERVICE AGREEMENT

DIR Contract No. DIR-TSO-4212 and AskReply, Inc. dba B3Gnow Software Service Agreement governs this SOFTWARE SERVICE AGREEMENT ("Agreement"). Agreement is entered into as of the date the Agreement is executed by all the parties (the "Effective Date"), between AskReply, Inc. d/b/a B2Gnow, an Arizona corporation of Phoenix, Arizona ("B2Gnow" or "Contractor"), and the Texas Comptroller of Public Accounts ("Customer"), an agency of the State of Texas, with offices located at 111<sup>th</sup> East 17<sup>th</sup> Street, Austin Texas 78774. B2Gnow was selected as the successful respondent under Customer's Price Request No. 304-20-0900MH issued March 25, 2020 ("Customer's PR"). This Agreement is incorporated as an attachment to the contemporaneously-executed Contract for Online HUB Registration and Profile Management Licensed Software and Related Services between B2Gnow and Customer ("B2Gnow-Customer Contract"). In consideration of the mutual covenants and promises contained in this Agreement, the parties agree as follows:

### 1 DEFINITIONS

"Agreement" means this Software Service Agreement and the attached Investment Proposal and/or Statement of Work.

"B2Gnow Technology" means all of B2Gnow's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by B2Gnow in providing the Service.

"Confidential Information" means any and all trade secrets, proprietary or confidential information, in whatever form, that are owned by a party and/or reasonably considered by it to be confidential, that a party has disclosed to the other party prior to the Effective Date, or that a party may disclose to the other party on or after the Effective Date. Confidential Information includes, without limitation, the object and source code to the System, as defined below. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement: (a) information which was already in the receiving party's possession as a matter of record prior to the Effective Date and not disclosed to the receiving party by the other party to this Agreement; (b) information that is independently developed by the receiving party before disclosure by the disclosing party as a matter of record; (c) information that is obtained from a third party who, insofar as is known to the receiving party, is not prohibited from transmitting the information to the receiving party by a contractual, legal or fiduciary obligation, whether explicit or customary, to the disclosing party; and (d) information which is or which becomes generally available to the public other than as a result of disclosure by the receiving party.

"Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service.

"Deliverable(s)" means any software code or other work product developed by B2Gnow in connection with the Professional Services and provided to Customer pursuant to the requirements of the Agreement

"Derivative Work" has the meaning as defined in the Copyright Act, 17 U.S.C. § 101 (2000).

"Documentation" means the standard user manual or other documentation, or explanatory material related to the System, as described in the Investment Proposal or Statement of Work attached as an exhibit to this Agreement, and any subsequent versions thereof which Customer may receive from B2Gnow.

"Intellectual Property Rights" means all intellectual property rights protected by law throughout the world, including all copyrights, copyright registrations and applications, trademark rights (including trade dress), trademark registrations and applications, patent rights (including the right to apply therefore), patent applications (including the right to claim priority under applicable international conventions) and all patents issuing thereon, industrial property rights, inventions (whether or not patentable), together with all utility and design, know-how, specifications, trade names, mask-work rights, trade secrets, moral rights, author's rights, algorithms, rights in packaging, goodwill, and other intellectual and industrial property rights, as may exist now and hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction.

"Statement of Work" means the document identified and attached as Exhibit A to this Agreement and that (a) specifically refers to this Agreement; and (b) defines additional rights and obligations of the parties with respect to the System, Documentation, or Professional Services. In the event of a conflict between the provisions of this Agreement and the provisions of the Statement of Work, the provisions of this Agreement will control.

"Technical Services" means any services performed as part of the implementation and activation of the System for the Customer.

"Service" means the specific modules of B2Gnow's online hosted diversity management system and related services identified on the Investment Proposal, developed, operated, and maintained by B2Gnow, accessible via <http://www.mwdbe.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by B2Gnow, to which you are being granted access under this Agreement, including the B2Gnow Technology and Content.

"System" means the computer software programs to be delivered to the Customer via the Internet pursuant to the Agreement.

### 2 LICENSE GRANTS AND RESTRICTIONS.

2.1 Subject to the terms of DIR Contract No. DIR-TSO-4212 and this Agreement, B2Gnow hereby grants to Customer a non exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of DIR Contract No. DIR-TSO-4212 and this Agreement. All rights not expressly granted to you are reserved by B2Gnow. B2Gnow acknowledges that Customer is an agency of the State of Texas and Customer's internal business purposes include any activities consistent with its statutory authority and contemplated under Customer's PR and the B2Gnow-Customer Contract.



## Software Service Agreement

2.2. Except as expressly set forth in DIR Contract No. DIR-TSO-4212 and this Agreement, or any Investment Proposal or Statement of Work, Customer may not:

- (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover, in any way, any source code, programming, algorithms, design structure, interoperability interfaces, concepts, construction methods underlying ideas, or file formats of the Service, for any purpose, (ii) remove any identification markings, including but not limited to logos, copyright notices, and trademarks, from the Service, or (iii) make any modification, enhancement, or Derivative Work of the Service, or incorporate the Service, or any portion thereof, into or with any other software;
- (ii) copy, sell, lease, sublicense, give, loan, assign, distribute or transfer in any manner or form, in whole or in part, the Service; or
- (iii) use the Service to develop or distribute any software product that competes in the marketplace with the System; or
- (iv) sell, lease, sublicense, give, loan, assign, distribute or transfer in any manner or form, in whole or in part, any Documentation or accompanying materials, electronic or written, to any third party.

Notwithstanding the foregoing, Customer may make copies of the Documentation, containing all legends, trademarks, trade names, copyright notices and other identifications associated with the original, to the extent reasonably necessary to permit access to and use of the Documentation by Customer's employees.

2.3 Except as specifically set forth in DIR Contract No. DIR-TSO-4212 and this Agreement, Customer acknowledges that this Agreement does not grant Customer any use or rights to the Service, including, but not limited to, any rights to the source code for the Service.

2.4. Customer acknowledges that B2Gnow has, and will from time to time create, license, evaluate, or implement other computer software programs that may be based upon or related to the System or Deliverables and that those other programs are not licensed to Customer under this Agreement except as specifically set forth in the Agreement or the Statement of Work.

2.5 Except as specifically set forth in DIR Contract No. DIR-TSO-4210 and this Agreement or the Investment Proposal or Statement of Work, Customer acknowledges that B2Gnow has no responsibility for providing Customer with any services, support, product upgrades or other enhancements for or in connection with, and that B2Gnow is under no obligation to create any product upgrades or enhancements to, the Service.

### 3 FEES AND PAYMENTS

3.1 In consideration of the rights granted and services provided to Customer under this Agreement, Customer will pay B2Gnow in accordance with DIR Contract NO. DIR-TSO-4212, Appendix C Pricing Index.

3.2 Payment Terms are detailed in DIR Contract No. DIR-TSO-4212, Appendix A Section 8 Pricing, Purchase Order, Invoices and Payments.

3.3 Customer will permit B2Gnow, once per year, to audit Customer's use of the Service, at reasonable times and with reasonable notice, for the purpose of verifying Customer's adherence to the terms and conditions of this Agreement. Any audit requested by B2Gnow will be conducted during Customer's regular business hours, will comply with Customer's normal security procedures, and will not unreasonably interfere with Customer's business operations. All out-of-pocket costs associated with an audit will be paid by B2Gnow, unless the audit reveals that Customer has violated the terms and restrictions of the licenses granted in this Agreement, in which case all costs of audit will be paid by Customer, in addition to, without limitation, any other courses of remedy arising from such violations.

### 4 WARRANTIES AND DISCLAIMERS

4.1 B2Gnow warrants to Customer that during the term of this Agreement, the System will perform as outlined in B2Gnow's product specification documents (user manuals and documentation available online) and this Agreement and Statement of Work. In case of conflict between these documents, this Agreement shall govern. The warranty does not cover any programs that have been altered in any way by any party other than B2Gnow or its authorized subcontractors. B2Gnow is not responsible for problems caused by the operating characteristics, whether themselves out-of-specification or not, of Customer's computer hardware, software, operating systems, or computer systems, the quality of the Customer's Internet connection to the System, nor for problems in the interaction of the System with non-B2Gnow software. If notified in writing by Customer during the warranty period, B2Gnow will, at its sole option, either (i) correct significant program errors in the System within a reasonable time, not to exceed seven (7) calendar days; or (ii) accept return of the System and Documentation and refund any unused Fees paid by Customer to B2Gnow under the Agreement.

4.2 B2Gnow warrants to Customer that the Professional Services set forth in the Agreement, including the Investment Proposal or Statement of Work, will be performed in a professional manner, consistent with generally accepted industry standards. The sole and exclusive remedy for a breach of the limited warranty set forth in this Section 4.2 shall be to require B2Gnow to use commercially reasonable efforts to perform the Professional Services as soon as is reasonably practicable, but in no event, later than thirty (30) days from the date Customer notifies B2Gnow of such breach. In the event B2Gnow is unable, after receiving a warranty breach notice under this Section 4.2, to perform the Professional Services to the Customer's reasonable satisfaction within the thirty (30) day period, Customer may terminate the Agreement and withhold payment to or receive a refund or credit from B2Gnow for the value of such





## Software Service Agreement

services, in no case to exceed the aggregate amounts paid out to B2Gnow by Customer in the twelve months immediately preceding notification of such claim delivered to B2Gnow by Customer.

4.3 B2Gnow does NOT warrant that the operation of the System and its associated data and/or information will meet the Customer's requirements or that the operation of the System and its associated data and/or information will be uninterrupted or error-free. The Customer is responsible for the accuracy and usability of all data that Customer entered into the system, including but not limited to Customer specific reports. CUSTOMER ASSUMES ENTIRE RISK AS IT APPLIES TO THE QUALITY AND PERFORMANCE OF THE DATA AND/OR INFORMATION WHICH IS SUPPLIED AND/OR INPUT INTO THE SYSTEM BY THE CUSTOMER. SHOULD THE SYSTEM AND ITS ASSOCIATED DATA AND/OR INFORMATION PROVE DEFECTIVE DUE TO DATA INPUT BY THE CUSTOMER, THE CUSTOMER (AND NOT B2Gnow) ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING REPAIR OR CORRECTION.

4.4 THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, OR SATISFACTORY QUALITY REGARDLESS OF WHETHER IMPOSED BY CONTRACT, STATUTE, COURSE OF DEALING, CUSTOM OR USAGE OR OTHERWISE.

### 5 LIMITATION OF LIABILITY

5.1 Notwithstanding any provision in this agreement to the contrary, Customer Limitation of Liability shall be handled in accordance to DIR Contract DIR-TSO-4212 Appendix A, Section 10K Limitation of Liability.

### 6 INDEMNIFICATION

6.1 Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract DIR-TSO-4212.

### 7 COPYRIGHT

7.1 Copyright shall be handled in accordance with Appendix A, Section 5 Intellectual Property Matters

### 8 INSURANCES

8.1 Insurance Coverage shall be handled in accordance with Appendix A, Section 10N of DIR Contract DIR-TSO-4212.

### 9 TRADE SECRETS AND CONFIDENTIAL INFORMATION

9.1 Trade Secrets and Confidential Information shall be handled in accordance with Appendix A, Section 5E of DIR Contract DIR-TSO-4212.

### 10 TRADEMARKS

10.1 Customer acknowledges B2Gnow's ownership of the trademark "B2Gnow," certain System names, and all related trademarks and service marks, as well as B2Gnow's subcontractors' ownership of their respective trademarks, service marks, and System names, including but not limited to B2Gnow's ownership of the trademarks "B2Gnow" and "B2Gnow Diversity Management System." Except as set forth in the Agreement, Customer further acknowledges that it will acquire no interest in such trademarks and service marks by virtue of this Agreement or the performance by Customer of its duties and obligations under this Agreement. Customer agrees not to use the name "B2Gnow" or any of the System names or marks (or any confusingly similar name or symbol), in whole or in part, as part of Customer's business or trade name.

10.2 B2Gnow acknowledges Customer's ownership of their trademarks/service marks currently in use. Except as set forth in the Agreement, B2Gnow further acknowledges that it will acquire no interest in the Customer's Marks by virtue of this Agreement or the performance by B2Gnow of its duties and obligations under this Agreement. B2Gnow agrees not to use the Customer's Marks (or any confusingly similar name or symbol), for any purpose without the prior written consent of Customer.

10.3 Each party agrees to reasonably cooperate with the other party in permitting the use of its trademarks for marketing and promotional purposes that benefit both parties. Each party must secure written approval to use the other party's trademarks, which approval will not be unreasonably withheld or delayed.

### 11 EXPORT

11.1 Customer agrees not to, directly or indirectly, export or re-export, or knowingly permit the export or re-export of, the Service, or any technical information about the System, Documentation or any Deliverable, to any country for which the United States Export Administration Act, any regulation thereunder, or any similar United States law or regulation, requires an export license or other United States government approval, unless the appropriate export license or approval has been obtained.



## Software Service Agreement

### 12 TERM AND TERMINATION

12.1 The term of assigned license and authorization to use the System shall be as set forth in Section 5.1 of the B2Gnow-Customer Contract.

12.2 Notwithstanding any provision in this Agreement Termination shall be handled in accordance with the B2Gnow-Customer Contract.

### 13 CUSTOMER RESPONSIBILITIES

13.1 Customer is responsible for all activity occurring under Customer accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify B2Gnow immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to B2Gnow immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer; and (iii) not impersonate another B2Gnow user or provide false identity information to gain access to or use the Service.

### 14 ACCOUNT INFORMATION AND DATA

14.1 B2Gnow does not own any data, information or material that Customer submits to the Service in the course of using the Service ("Customer Data"). Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and B2Gnow shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of Customer's breach), B2Gnow will make available to Customer a file of the Customer Data within 30 days of termination if Customer so requests at the time of termination. B2Gnow reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, Customer's non-payment. Upon termination for cause, Customer's right to access or use Customer Data immediately ceases, and B2Gnow shall have no obligation to maintain or forward any Customer Data.

### 15 GENERAL PROVISIONS

15.1 This Agreement does not create any relationship of association, employment, partnership, joint venture or agency between the parties. Neither party will have any right or authority to assume, create or incur any liability or obligation of any kind against or in the name of the other party.

15.2 DIR Contract No. DIR-TSO-4212 and this Agreement and all documents incorporated into this agreement by reference constitute the entire agreement and understanding between the parties with respect to the subject matter in this Agreement. The Agreement merges all previous discussions and negotiations between the parties and the Agreement supersedes and replaces any and every other agreement, which may have existed between B2Gnow and Customer with respect to the contents of this Agreement. Should there be a conflict between these documents DIR Contract No. DIR-TSO-4212 shall prevail.

15.3 Except to the extent and in the manner specified in the Agreement, any modification or amendment of any provision of this Agreement must be in writing and bear the signature of the duly authorized representative of each party and, if required, the approval of the Customer's Board Members.

15.4 The failure of either party to exercise any right granted under this Agreement, or to require the performance by the other party of any provision of this Agreement, or the waiver by either party of any breach of this Agreement, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of this Agreement.

15.5 Assignments shall be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-4212.

15.6 Notices shall be in accordance with DIR Contract No. DIR-TSO-4212 Section 6 Notifications and provided for or which may be given in connection with the Agreement shall be in writing and shall be delivered in person, by a nationally recognized overnight courier service, by facsimile (with electronic confirmation to sender) or by registered or certified mail with postage prepaid and return receipt requested.

If to B2GNow:        AskReply, Inc  
                               725 West McDowell Rd  
                               Phoenix, AZ 85007  
                               Attn: Frank Begalke

If to Customer:  
Texas Comptroller of Public Accounts



## Software Service Agreement

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ATTN: Contract Section, Operations and Support Legal Services Division

111 E. 17<sup>th</sup> Street, Room 201

Austin, Texas 78774

With copy e-mailed to: [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov)

or to such other address as either party, by like notice, shall designate. Such notices, if sent by United States mail, shall be deemed to have been given upon three (3) business days after being deposited in the United States mail. Such notices, if sent by facsimile (with electronic confirmation to sender) or nationally recognized overnight courier service, shall be deemed to have been given one (1) day after being sent. Such notices, if delivered in person, shall be deemed to have been given upon receipt by the other party.

15.7 If any provision of the Agreement is determined by a court of competent jurisdiction to be in violation of any applicable law or otherwise invalid or unenforceable, such provision will to such extent as it is determined to be illegal, invalid or unenforceable under such law be deemed null and void, but the Agreement will otherwise remain in full force and effect. Furthermore, it is the intention of the parties that in lieu of such illegal, invalid, or unenforceable provision, there automatically be added as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible to be legal, valid, and enforceable.

15.8 Disputes shall be handled in accordance with DIR Contract DIR-TSO-4212 Appendix A, Section 11A Dispute Resolution.

15.9 This Agreement may be executed in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by fax will be sufficient to bind the parties to the terms and conditions of this Agreement.

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# Software Service Agreement

The parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Texas Comptroller of Public Accounts

B2Gnow/AskReply, Inc.

DocuSigned by:  
Signature: *Lisa Craven*  
11EA6DEF0EC441E...

Date: 8/21/2020 | 5:12 PM CDT

Print Name:  
Lisa Craven

Signature: *Frank Begalke*

Date: *08/17/2020*

Print Name: Frank Begalke

Title:

Title: Chief Operating Officer

Deputy

Address: B2Gnow/AskReply, Inc.  
725 West McDowell Road  
Phoenix, Arizona 85007

Comptroller

Telephone: 602-325-9277

Address:

Fax: 866-892-2913

111 East 17<sup>th</sup> St  
Austin, TX 78774

Telephone:

Fax:



# Exhibit A

## B2Gnow Proposal.pdf