

**AMENDMENT NUMBER 1
TO
CONTRACT NUMBER DIR-SDD-2260
BETWEEN
STATE OF TEXAS, ACTING BY AND THROUGH THE DEPARTMENT OF
INFORMATION RESOURCES
AND
THE NORTH HIGHLAND COMPANY**

This Amendment Number 1 to Contract Number DIR-SDD-2260 (“Contract”) is between the Department of Information Resources (“DIR”) and the North Highland Company (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract**, is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through June 26, 2016 or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for one (1) additional one-year term.

2. **Contract, Section 3. Service Offerings**, is hereby restated in its entirety as follows:

Services available under this Contract are limited to the Deliverables-Based Information Technology Services Technology Categories as specified below. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor’s response to the solicitation described in Section 1.B above.

No hardware or software products and related services may be sold through this contract. Any products needed to deliver final services must be procured through another contract vehicle. Examples of these products include: Software as a Service (SaaS), subscriptions, annual license maintenance and support, and web hosting.

Project Management

- 1) Definition: Project Management service providers may perform any or all of the project management processes identified by the Project Management Institute as published in Table 3-45 of the PMBOK® Guide, Third Edition or most recent.
- 2) Examples of included services: utilizing the Customer’s tools and processes, using off-the-shelf tools or using Vendor’s own proprietary tools and processes to manage a project.

Independent Verification and Validation (IV&V)

- 1) Definition: Verification and Validation are independent procedures that are used together for in-depth analysis by checking that a product, service, or system meets requirements and specifications and that it fulfills its intended purpose.
- 2) Examples of included services: Validation of software design to meet system needs/requirements; traceability of safety critical requirements; design analysis of selected critical algorithms; and code analysis of mission-critical software components.
3. **Contract, Section 4. Pricing**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts, **Section 7. Pricing, Purchase Orders, Invoices and Payments**.
4. **Contract, Section 5. DIR Administrative Fee**, is hereby re-numbered as **Section 4. Administrative Fee AND** is hereby restated in its entirety as follows:

4. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00. The effective date of this change was October 1, 2013.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

5. **Contract, Section 6. Notification** is hereby re-numbered **Section 5** and is restated in its entirety as follows:

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

If sent to the State:

Shannon Kelley
Enterprise Contract Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 463-7666
Facsimile: (512) 475-4759

If sent to the Vendor:

Barbara Ray
The North Highland Company
3800 Esplanade Way, Suite 160
Tallahassee, Florida 32311
Phone: (850) 688-9332
Facsimile: (850) 222-4738
Email: barbara.ray@northhighland.com

6. **Contract, Section 9. Intellectual Property Matters**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts, **Section 4. Intellectual Property Matters**.
7. **Contract, Sections 7 - 10** are hereby re-numbered **Sections 6 – 8**, as follows:
 - A. Section 7. Statement of Work is re-numbered as **Section 6. Statement of Work**;
 - B. Section 8. Customer Satisfaction Metrics is re-numbered as **Section 7. Customer Satisfaction Metrics**;
 - C. Section 10. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts is re-numbered **Section 8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**.
8. **Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts dated 12/16/12**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts dated 02/04/15**, as attached.
9. **Section 8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**.
 - A. **Section 6, Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, 1) Vendor Website** is hereby restated in its entirety as follows:

Within sixty (60) days from the effective date of the Contract, Vendor will establish and maintain a website specific to the service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the Technology Categories awarded, service descriptions, contact information for Vendor, instructions for obtaining quotes and placing Purchase Orders. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications

Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph D of this Section, and contain a link to the DIR website for the Contract.

B. Section 6, Contract Fulfillment and Promotion, C. Services Warranty and Return Policies is hereby restated in its entirety as follows:

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning services warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated public procurement contracts for state agencies in the US via a central procurement agency and contract vehicle, acting on behalf of agencies in the entire state for substantially similar services.

C. Section 8, Contract Administration, C. Records and Audit, 3) is hereby restated in its entirety as follows:

Vendor and/or Order Fulfillers shall grant access to all paper and records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. For any such records requested by the DIR that Vendor maintains electronically, Vendor shall provide such records to DIR, but shall not be required to grant direct access (i.e., password protected access) to its proprietary computer systems to DIR or any of DIR's representatives. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) days of receipt.

D. Section 9, Vendor Responsibilities, N. Required Insurance Coverage is hereby restated in its entirety as follows:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any

Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage, except Workers Compensation. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) Endeavor to provide 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) Endeavor to provide 30-day Notice of Termination; and
- c) Additional Insured.

E. Section 9, Vendor Responsibilities, W. State Ownership of Work Product is hereby restated in its entirety as follows:

Vendor and Customer acknowledge and agree that any and all analyses, evaluations, reports, memoranda, letters, ideas, processes, methods, programs, and manuals that were developed, prepared, conceived, made or suggested by the Vendor for any DIR Customer pursuant to a SOW, including all such developments as are originated or conceived during the term of this Contract but are completed or reduced to writing thereafter (the "Work Product") will be and remain the exclusive property of DIR's Customer. For those DIR Customers without statutory authority to own such work product, DIR shall do so on their behalf. All rights, title and ownership interests, including copyright, which Vendor and all Workers may have in any Work Product or any tangible media embodying such Work Product are hereby assigned to DIR's Customer or, in those cases where the Customer does not have the authority, to DIR. Vendor, for itself and on behalf of its Workers, waives any property interest in such work product. The parties agree that the ownership provisions set forth in the Contract for Services regarding Vendor's retained ownership of "Vendor IP" shall apply to this section.

F. Section 9, Vendor Responsibilities, X. Warranty is hereby restated in its entirety as follows:

The Customer has 30 days from the date of signature on the Vendor Invoice to inform Vendor of its determination that the Vendor has made errors in completed deliverable. Customer will immediately inform the Vendor of the Customer's determination. The Vendor shall make such corrections and revisions as are necessary so that the deliverables complained of are acceptable to Customer and shall be corrected without cost to Customer. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original deliverable. THE FOREGOING WARRANTIES OF VENDOR ARE VENDOR'S ONLY WARRANTIES CONCERNING THE SERVICES AND ANY DELIVERABLES, AND ARE MADE FOR THE BENEFIT OF CUSTOMER ONLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR'S OBLIGATION CONCERNING INFRINGEMENT WILL NOT BE REDUCED BY THE FOREGOING.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. DIR retains the right to require further amendment to the Contract to update its terms and conditions as may be reasonable, necessary or required.

In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 1, and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of June 26, 2015.

The North Highland Company

Authorized By: signature on file

Name: Barbara Ray

Title: Vice President

Date: June 11, 2015

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

Authorized By: signature on file

Name: Dale Richardson

Title: Chief Operations Officer

Date: June 23, 2015

Legal: signature on file