

**Amendment Number 1**  
**to**  
**Contract Number DIR-SDD-1921**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**VERDTEK, LLC**

This Amendment Number 1 to Contract Number DIR-SDD-1921 (“Contract”) is between the Department of Information Resources (“DIR”) and VerdTek, LLC (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, 1. Introduction, C. Order of Precedence** is hereby restated in its entirety as follows:

**C. Order of Precedence**

This Contract; Appendix E, Master Operating Lease Agreement; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Sample Supplemental Agreement; Appendix E, Master Operating Lease Agreement; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-174, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-174, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix E, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. **Contract, Section 4. Pricing**, is hereby restated in its entirety as follows:

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

3. **Contract, Section 4. Pricing A - G** is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Services Contracts dated 05/02/14 as attached hereto.
4. **Contract, Section 5. DIR Administrative Fee** is hereby restated in its entirety as follows:

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 will be **September 1, 2014**.

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 by Vendor in the price to the Customer.

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

**6. Notification**

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

If sent to the State:

Dana L. Collins, CTPM, CTCM  
Manager, Contract and Vendor Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 936-2233  
Facsimile: (512) 475-4759  
Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:

Gilbert Benavides  
VerdTek, LLC  
7000 North MoPac, Suite 200  
Austin, Texas 78731  
Phone: (512) 703-0092  
Facsimile: (512) 551-0155  
Email: [benavidesg@verdtek.com](mailto:benavidesg@verdtek.com)

6. **Contract, Section 7. Service and Leasing Agreement** is hereby restated by adding **C. Conflicting or Additional Terms** in its entirety as follows:

**C. Conflicting or Additional Terms**

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

7. **Contract, Section 8. Intellectual Property Matters, A - L** is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Services Contracts dated 05/02/14 as attached hereto.
8. **Appendix A. Standard Terms and Conditions For Services**, is hereby restated in its entirety and replaced with the attached **Appendix A. Standard Terms and Conditions For Services Contracts** dated 05/02/2014.
9. **Contract, Section 9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.**

A. **Authorized Exceptions to Appendix A, Standard Terms and Conditions For Services Contracts, Appendix A, Section 8, Contract Administration, B. Reporting and Administrative Fees, 2) Detailed Monthly** is hereby revised by adding the second paragraph below in its entirety which reads as follows:

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, manufacturer's suggested retail price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

If Vendor submits three (3) monthly sales reports or administrative fee payments late within a 12-month period, DIR reserves the right to suspend or terminate this Contract for cause per Section 11.B.4.a. of Appendix A, Termination for Cause. If Vendor is late with its monthly sales report, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly report is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly sales reports. If Vendor is late with its monthly administrative fee payment, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly administrative fee payment is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly administrative fee payments. DIR does not waive any other contractual remedy pursuant to this Contract.

10. **Appendix C – Pricing Index** is hereby restated as attached hereto as Appendix C – Pricing index.

11. **Appendix E – Master Operating Lease Agreement** is hereby add as attached hereto as Appendix E – Master Operating Lease Agreement.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 1 and then the Contract.

**(Remainder of page intentionally left blank)**

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature.

**VERDTEK, LLC**

**Authorized By:** Signature on File

**Name:** Gilbert Benavides

**Title:** COO

**Date:** August 13<sup>th</sup>, 2014

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

**Authorized By:** Signature on File

**Name:** Karen Robinson

**Title:** Executive Director

**Date:** 8-14-14

**General Counsel:** DRBrown 8-14-14