

**AMENDMENT NUMBER 2
TO
CONTRACT NO. DIR-SDD-960
BETWEEN
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES
AND
SET SOLUTIONS, INC.**

This Amendment Number 2 to Contract Number DIR-SDD-960 (“Contract”) is between the Department of Information Resources (“DIR”) and Set Solutions, Inc. (“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 eleven (11) months through March 27, 2011. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) additional one-year terms.

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

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

3. **Contract, Section 5. DIR Administrative Fee, A)** is hereby restated in its entirety as follows:

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 one and one quarter percent (1.25%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$1,250.00. The new administrative fee will be effective May 1, 2010.

4. **Contract, Section 7. Software License and Service Agreements, B. Shrink/Click-wrap License Agreement** is hereby restated in its entirety as follows:

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

5. **Contract, Section 8. Intellectual Property Matters, B. Ownership** is hereby restated in its entirety as follows:

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday thru Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

6. **Contract, Section 8. Intellectual Property Matters, E. Confidentiality** is hereby restated in its entirety as follows:

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product, shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

7. **Appendix A, Section 3. Definitions, H. Compliance Check** is hereby added as follows:

H. Compliance Check – an audit of Vendor’s compliance with the Contract performed either by a third party auditor or DIR contract management staff.

8. **Appendix A, Section 7. Purchase Orders, Invoices and Payments, C. Payments** is hereby restated in its entirety as follows:

C. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

9. **Appendix A, Section 9. Vendor Responsibilities, H. Confidentiality, 1)** is hereby restated in its entirety as follows:

H. Confidentiality

1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General’s office concerning this Act.

10. **Appendix A, Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel** is hereby restated in its entirety as follows:

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as “Data”) belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer’s security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

11. **Appendix A, Section 9. Vendor Responsibilities, P. Immigration** is hereby restated in its entirety as follows:

P. Immigration

Vendor shall comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any

individual(s) hired on or after the effective date of 1996 Act., who will perform any labor or services under this Contract.

12. **Appendix A, Section 9. Vendor Responsibilities, Q. Public Disclosure** is hereby added as follows:

Q. Public Disclosure

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

13. **Appendix A, Section 9. Vendor Responsibilities, R. Substitutions** is hereby added as follows:

R. Substitutions

Substitutions are not permitted without the written permission of DIR or Customer.

14. **Appendix A, Section 10. Contract Enforcement, B. Termination, 5) Customer Rights Under Termination** is hereby restated in its entirety as follows:

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

15. **Appendix A, Section 10. Contract Enforcement, B. Termination, 6) Vendor or Order Fulfiller Rights Under Termination** is hereby restated in its entirety as follows:

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

16. **Appendix C, Product and Pricing Index** is hereby replaced in its entirety with the attached **Appendix C, Product and Pricing Index**.

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 2, then Amendment Number 1 and then Contract DIR-SDD-960.

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IN WITNESS WHEREOF, the parties hereby execute this Amendment Number 2 to be effective as of the last party to sign, but in all events no later than April 27, 2010.

SET SOLUTIONS, INC.

By: _____ Signature on File _____

Name: _____ Randle Moore _____

Title: _____ President _____

Date: _____ 04/26/10 _____

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

By: _____ Signature on File _____

Name: _____ Cindy Reed _____

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: _____ 04/28/10 _____

Legal: _____ Initials on File 04/28/10 _____