

CONTRACT #2
RFS # 309.01-12509
FA # 09-26568
Edison # 3650

Department of Treasury
Tennessee Consolidated
Retirement System (TCRS)

VENDOR:
The North Highland Company

STATE OF TENNESSEE



DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT

615.741.2956
David.Lillard@tn.gov

STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

Sender's telephone: 615.253.6150
Sender's email: Alison.Cleaves@tn.gov

MEMORANDUM

TO: Fiscal Review Committee

THROUGH: Christy Allen, Assistant Treasurer
Legal, Compliance and Audit

FROM: Alison Cleaves, Assistant General Counsel

DATE: July 23, 2013

SUBJECT: Noncompetitive Amendment Requests – Deloitte and North Highland

This memorandum details the terms of the Department of Treasury's ("Department") contract amendments with Deloitte Consulting LLP ("Deloitte") and The North Highland Group ("North Highland") that is before the Fiscal Review Committee on the Committee's August, 2013 agenda as well as the justification for the noncompetitive amendment requests.

Both of the Department's original contracts were procured pursuant to Tenn. Code Ann. §8-34-321, which authorized the Concord Project as an initiative to replace the existing Tennessee Consolidated Retirement Systems' ("TCRS") retirement operating systems and to implement other technology improvements by consolidating the various retirement administration systems into one (1) centralized system that may be accessed by retirement system members. Statute specifically provides that the cost for the development and implementation of the Concord Project will come from retirement system fund earnings; however, the costs for the maintenance of the project shall not be funded pursuant to this section of the law.

In employing this statutory provision to procure services for the development and implementation of the Concord Project, the Department released Request for Proposal ("RFP") documents seeking the services of an individual or entity who/that could develop an operation system and an individual or entity who/that could provide proper oversight and quality control over the development of the system. The RFP process yielded contracts between the Department

and Deloitte for the development of the system as well as North Highland for oversight services. The Department's contract with Deloitte contained a contract term from December 1, 2010 to November 30, 2015 with a maximum liability of thirty million six hundred eighty-six thousand five hundred forty-one dollars and no cents (\$30,686,541.00). The Department's contract with North Highland contained a contract term from December 1, 2008 to November 30, 2013 with a maximum liability of three million one hundred fifty thousand dollars and no cents (\$3,150,000.00). The noncompetitive amendment requests for both contracts are asking for amendments with one (1)-year term extensions for each contract as well as additional funds to be added to the contract's maximum liability – four hundred thousand dollars (\$400,000.00) to be added to the North Highland contract and one million six hundred thousand dollars (\$1,600,000.00) to be added to Deloitte contract. The increased funding for both contracts does not exceed the total Concord Project budget. All of the other terms in the scope of services sections for each of the original contracts will not be amended.

The justification for procuring these amendments as noncompetitive procurements is that another competitive procurement for the completion of the Concord Project would be a detriment to TCRS and the State. Both Contractors have been working on the Concord Project continuously for years, during which period of time, both have developed a thorough understanding and expertise in TCRS' current administration systems, and have put an enormous amount of work and resources into the development, implementation and oversight of this new system. By engaging in a competitive procurement to complete the remainder of the Concord Project, which could be awarded to another Contractor, the retirement system would lose all of Deloitte's valuable knowledge and expertise; it would lose its rate of progress on the project while another Contractor becomes knowledgeable about TCRS' current systems; it may lose more money to a new Contractor as it spends time and resources completing the project that would not otherwise have been spent by the current Contractor; and ultimately, the retirement system may not meet its deadlines for implementation of the project. The negative consequences of engaging in another competitive procurement would be a disservice to the retirement system as well as its membership, and would necessitate the noncompetitive amendment requests to continue the Department's contracts with Deloitte and North Highland.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Alison Cleaves	*Contact Phone:	253-6150		
*Original Contract Number:	FA-09-26568 00	*Original RFS Number:	309.01-125-09		
Edison Contract Number: <i>(if applicable)</i>	FA-09-26568 00	Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	December 1, 2008	*Current End Date:	November 30, 2013		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	October 1, 2013				
*Department Submitting:	Department of Treasury				
*Division:	Tennessee Consolidated Retirement System				
*Date Submitted:	July 23, 2013				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	The North Highland Group				
*Current Maximum Liability:	3,150,000.00				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:2009	FY:2010	FY:2011	FY:2012	FY2013	FY2014
\$787,500.00	\$787,500.00	\$787,500.00	\$472,500.00	\$223,000.00	\$92,000.00
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:2009	FY:2010	FY:2011	FY:2012	FY2013	FY
\$84,000.00	\$35,275.00	\$260,385.00	\$984,210.00	\$1,047,525.00	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:	State:		Federal:	
Interdepartmental:			<i>Other:</i>	Earnings from investments in the retirement system.
If " <i>other</i> " please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>			Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A			N/A	
Method of Original Award: <i>(if applicable)</i>			RFP	
*What were the projected costs of the service for the entire term of the contract prior to contract award?			\$3,150,000.00	

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2015	FY:	FY:	FY:	FY:
Monitoring and oversight of the Concord Project	\$400,000.00				

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:
The proposed savings that will be realized are all of the costs associated with a new vendor developing an expertise in the Concord Project, a complex and long-term project for the consolidation of the retirement operating					

Supplemental Documentation Required for
Fiscal Review Committee

systems.					
Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.					
Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
It is difficult to quantify the costs associated with having a new vendor achieve a level of understanding and expertise for a multi-year project that is nearing completion.					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Total Payments to a Vendor

The North Highland Company

Unit	Voucher	Invoice	Remit Vndr	Name	Gross Amt	Reference	Pymnt Date	Message	
	52								
30901	000070	NAS-2008-0139	000003088	The North Highland Compar	32,330.00	00000482	2/12/2008		
30901	000090	Nash-2008-0144	000003088	The North Highland Compar	24,050.00	000001057	3/6/2008	January Services # NAS-2008-0114	
30901	0000165	Nas-2008-0148	000003088	The North Highland Compar	5,850.00	000001814	4/3/2008		
30901	0000240	NAS-2009-0151	000003088	The North Highland Compar	4,500.00	000003591	5/20/2008		
30901	0000251	NAS-2009-0155	000003088	The North Highland Compar	4,500.00	000004353	6/5/2008		
30901	0000318	NAS-2009-0159	000003088	The North Highland Compar	3,600.00	000006377	6/30/2008		
30901	0000340	NAS-2009-0161	000003088	The North Highland Compar	9,170.00	000006560	7/24/2008		
					\$ 84,000.00	FY 2009			
30901	0000590	NAS-2009-0169	000003088	The North Highland Compar	1,500.00	000008899	9/16/2008	Invoice# NAS-2009-0169	
30901	0000676	NAS-2009-0178	000003088	The North Highland Compar	850.00	000012293	10/28/2008	Invoice# NAS-2009-0178	
30901	0000678	NAS-2009-0174	000003088	The North Highland Compar	1,125.00	000012293	10/28/2008	Invoice# NAS-2009-0174	
30901	0000843	NAS-2009-0183	000003088	The North Highland Compar	10,500.00	000017761	12/8/2008	NAS-2009-0183	
30901	0000942	NAS-2009-0188	000003088	The North Highland Compar	5,540.00	000022757	1/22/2010	Invoice# NAS-2009-0188	
30901	0000943	NAS-2009-0193	000003088	The North Highland Compar	3,990.00	000023179	1/27/2010	Invoice# NAS-2009-0193	
30901	0001060	NAS-2010-0200	000003088	The North Highland Compar	7,385.00	000028006	3/8/2010	TCRS Invoice# NAS-2010-02001 - Conco	
30901	0001224	NAS-2010-0204	000003088	The North Highland Compar	1,910.00	000036225	5/14/2010	TCRS Invoice# NAS-2010-0204	
30901	0001282	NAS-2010-0212	000003088	The North Highland Compar	1,275.00	000039661	6/11/2010	TCRS Invoice# NAS-2010-02123 05-14-	
30901	0001406	NAS-2010-0220	000003088	The North Highland Compar	1,200.00	000045819	7/30/2010	TCRS Invoice# NAS-2010-02206 5/1/10-6/25/	
					\$ 35,275.00	FY 2010			
30901	0001491	NAS-2010-0226	000003088	The North Highland Compar	1,575.00	000050461	9/9/2010	TCRS Invoice# NAS-2010-0226	
30901	0001622	NAS-2010-0230	000003088	The North Highland Compar	4,380.00	000055078	10/14/2010	TCRS Invoice# NAS-2010-02306 (8/9/10-9/3/1	
30901	0001711	NAS-2010-0235	000003088	The North Highland Compar	1,350.00	000057799	11/4/2010	NAS-2010-0235	
30901	0001811	NAS-2010-0240	000003088	The North Highland Compar	300.00	000064735	12/30/2010	TCRS Invoice# NAS-2010-02404 - 10/4/10-10/29/	
30901	0001811	NAS-2010-0245	000003088	The North Highland Compar	450.00	000064735	12/30/2010	TCRS Invoice# NAS-2010-02455 11/01/10-11/26/	
30901	0002003	NAS-2011-0253	000003088	The North Highland Compar	21,700.00	000071847	2/28/2011	professional services for Concor	
30901	0002006	NAS-2011-0258	000003088	The North Highland Compar	37,890.00	000072718	3/4/2011	Professional Services for Concor	
30901	0002076	NAS-2011-0263	000003088	The North Highland Compar	38,065.00	000076326	4/1/2011	CONCORD CONSULTING SERVICES 1/29/11-2/	
30901	0002145	NAS-2011-0271	000003088	The North Highland Compar	48,770.00	000080750	5/5/2011	TDT01 Concord IV&V 2/26/11-4/01/1	
30901	0002224	NAS-2011-0277	000003088	The North Highland Compar	40,015.00	000083865	5/27/2011	Consulting Services April 201	
30901	0002344	NAS-2011-0282	000003088	The North Highland Compar	65,890.00	000088928	7/6/2011	Quality Assurance for 4/31/11-5/27/1	
					#####	FY 2011			
30901	0002457	NAS-2011-0295	000003088	The North Highland Compar	85,205.00	000094990	8/19/2011	IV&V 5/30/11-6/30/11	
30901	0002503	NAS-2011-0297	000003088	The North Highland Compar	63,965.00	000096280	8/31/2011	Concord IV&V 7/1/11-7/31/11	
30901	0002579	NAS-2011-0304	000003088	The North Highland Compar	82,245.00	000099963	9/30/2011	Quality Assurance Services 7/30/11-9/2/1	
30901	0002743	NAS-2011-0312	000003088	The North Highland Compar	57,815.00	000107610	11/29/2011	IV&V 9/3/11-9/30/11	
30901	0002782	NAS-2011-0320	000003088	The North Highland Compar	64,625.00	000108601	12/6/2011	Quality Assurance 10/1/11-10/28/1	
30901	0002845	NAS-2011-0332	000003088	The North Highland Compar	79,825.00	000112468	1/6/2012	IV&V 10/30/11-12/02/11	
30901	0002954	NAS-2012-0340	000003088	The North Highland Compar	51,970.00	000117397	2/14/2012	Concord IV&V 12/3/11-12/30/1	
30901	0003100	NAS-2012-0349	000003088	The North Highland Compar	109,500.00	000002662	4/20/2012	Concord IV&V 1/1/12-2/3/12	
30901	0003100	NAS-2012-0356	000003088	The North Highland Compar	92,290.00	000002662	4/20/2012	Concord IV&V 2/6/12-3/2/12	
30901	0003118	NAS-2012-0364	000003088	The North Highland Compar	87,775.00	000004572	5/4/2012	Concord IV&V 3/5/12-3/30/12	
30901	0003239	NAS-2012-0370	000003088	The North Highland Compar	100,055.00	000011825	6/26/2012	Quality Assurance 4/1/12-4/27/12	
30901	0003256	NAS-2012-0377	000003088	The North Highland Compar	108,940.00	000013323	7/5/2012	Concord IV&V 4/2/12 to 6/1/12	
					#####	FY 2012			

30901	0003350:	NAS-2012-0382	000003088	The North Highland Compar	92,375.00	000017853	8/9/2012; 6/2/2012 to 6/30/2012 Concord IV&V
30901	0003402	NAS-2012-0387	000003088	The North Highland Compar	89,410.00	000020850	8/31/2012; 7/1/2012-7/27/2012 IV&V
30901	0003522:	NAS-2012-0393	000003088	The North Highland Compar	116,875.00	000026268	10/11/2012; Concord IV&V 7/30/15-8/31/15;
30901	0003618:	NAS-2012-0401	000003088	The North Highland Compar	87,690.00	000029131	11/1/2012; Concord IV&V 9/1/12-9/30/12;
30901	0003748:	NAS-2012-0407	000003088	The North Highland Compar	114,410.00	000035765	12/19/2012; Concord IV&V 10/1/2012-11/2/2012
30901	0003824:	NAS-2012-0412	000003088	The North Highland Compar	90,380.00	000039896	1/24/2013; Concord Quality Control 11/3/2012-11/30/2012
30901	0003930:	NAS-2012-0418	000003088	The North Highland Compar	66,530.00	000045680	3/7/2013; IV&V 12/01/12-12/28/12;
30901	0003981:	NAS-2013-0423	000003088	The North Highland Compar	88,440.00	000048454	3/26/2013; Quality Assurance 12/31/12-2/1/13
30901	0003981	NAS-2013-0433	000003088	The North Highland Compar	77,770.00	000050594	4/11/2013; Quality Assurance 2/2/13-3/1/13;
30901	0004057:	NAS-2013-0438	000003088	The North Highland Compar	67,825.00	000054455	5/8/2013; IV&V 3/2/13-3/29/13
30901	0004112:	NAS-2013-0445	000003088	The North Highland Compar	71,245.00	000058397	6/6/2013; IV&V for 4/1/13-4/26/13
30901	0004165:	NAS-2013-0453	000003088	The North Highland Compar	84,575.00	000062999	7/5/2013; IV&V for 4/29/13 to 5/31/13

FY 2013

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Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

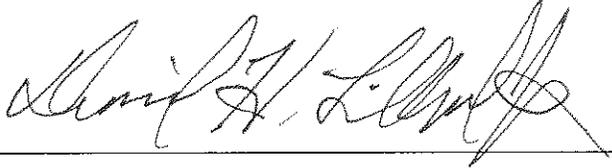
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	309.01-125-09	
1. Procuring Agency	Department of Treasury	
2. Contractor	The North Highland Group	
3. Contract #	FA-09-26568 00	
4. Proposed Amendment #	1	
5. Edison ID #	FA-09-26568 00	
6. Contract Begin Date	December 1, 2008	
7. Current Contract End Date – with ALL options to extend exercised	November 30, 2013	
8. Proposed Contract End Date – with ALL options to extend exercised	November 1, 2014	
9. Current Maximum Contract Cost – with ALL options to extend exercised	\$ 3,150,000.00	
10. Proposed Maximum Contract Cost – with ALL options to extend exercised	\$ 3,550,000.00	
11. Office for Information Resources Endorsement – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Human Resources Support – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
14. Explanation Need for the Proposed Amendment		
<p>The proposed amendment is necessary in order to extend the Department's current contract with The North Highland Group ("North Highland") for one (1) year and to increase the maximum liability cost of the current contract by four hundred thousand dollars (\$400,000.00). The request for increased compensation to North Highland will not exceed the overall Concord Project budget.</p> <p>The proposed amendment to the Department's current contract with North Highland is a companion to the noncompetitive amendment request submitted relative to Deloitte</p>		

Request Tracking #	309.01-125-09
<p>Consulting LLP ("Deloitte"). North Highland's current contract with the Department requires it to provide quality-assurance, monitoring and oversight services relative to Deloitte's development of the Concord Project. The Concord Project is designed to provide a consolidated and comprehensive system of current retirement system records that could be maintained and updated electronically and through automated functions. The integration of the various current retirement benefits systems would centralize and modernize all TCRS functions into a user-friendly web-based system. The establishment of the Concord Project is provided in Tenn. Code Ann. §§8-34-321. The statute provides that the TCRS is authorized to charge to and pay from the earnings of the funds of the retirement system the cost for implementing the Concord Project, the project being intended to replace existing retirement operating systems and to implement other technology improvements; provided, however, that no cost associated with the ongoing maintenance of the improvements, or the state personnel necessary for maintaining the improvements, shall be funded pursuant to this section.</p> <p>As the Concord Project is approaching its final phases before becoming fully functional, the Department has submitted a noncompetitive amendment request for both the Deloitte and North Highland contracts to extend the term of both contracts and to request additional funds for both Contractors in an effort to complete the project. The reason for the requested amendment relative to North Highland is to ensure that North Highland has enough time in which to complete the project that it has started. North Highland has been working on the Concord Project for approximately four (4) years and has been working with Deloitte for approximately three (3) years. During those periods of time, North Highland has not only developed an expertise in the scope of the Concord Project, but has also developed a successful working relationship with Deloitte. Accompanying the request for an extension of time is the request to increase the contract's maximum liability by four hundred thousand dollars (\$400,000.00). The need for increased time and contract funding is a result of unanticipated expenses that occurred from developing this new retirement benefits administration system and a new user interface. North Highland's knowledge of the current retirement benefits system as well as the new system is invaluable at this stage of a multi-year, multi-phased project. Another contractor secured through a competitive procurement would not share the same knowledge base as North Highland and would, most likely, not be able to complete the project within the projected timeframe.</p>	
<p>15. Name & Address of the Contractor's Principal Owner(s) <i>- NOT required for a TN state education institution</i></p> <p>The North Highland Company; 333 Piedmont Road, NE; Suite 100; Atlanta, Georgia 30305.</p>	
<p>16. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>Since 1992, the North Highland Company has been providing management and technology consulting services through more than twenty (20) offices in ten (10) states, and in more than thirty (30) offices overseas. It provides services in areas such as business strategy, supply chain management, marketing and customer service, business process improvement and technology management.</p>	
<p>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>There are no other reasonable, competitive procurement alternatives that would allow TCRS to complete the Concord Project successfully within the timeframe established by TCRS as dictated by applicable law. North Highland has been working on this project consistently for almost three (3) years, during which period of time, it has developed a thorough understanding of TCRS' current systems and has put an enormous amount of work and resources into the development and implementation of this new system. It would be a disservice to TCRS as well as its membership to waste its time and resources to engage in a competitive procurement when the current contractor has spent its time and resources for approximately four (4) years developing an expertise in this area that would allow the contractor to successfully complete the project. Additionally, to the extent that the Department engaged in a competitive procurement to complete the final phase of this project and it was awarded to another contractor, TCRS would lose all of North Highland's valuable knowledge and expertise, it would lose its rate of progress on the project while another contractor becomes knowledgeable about TCRS' current systems, and ultimately, TCRS may</p>	

Request Tracking #	309.01-125-09
not meet its deadlines for implementation of the project.	
<p>18. Justification – <i>specifically explain why non-competitive negotiation is in the best interest of the state</i></p> <p>The noncompetitive amendment request is in the best interest of the State because it will allow the TCRS to successfully complete the Concord Project within the established timeframes without having to engage in another competitive negotiation to complete the remainder of the project. Two (2) of the three (3) major phases have been successfully implemented. The time and effort that would be spent on another competitive negotiation would only detract from the progress the Deloitte has made in implementing this new system and may prevent TCRS from meeting its established timeframes for completion.</p>	
<p>Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p> <p> July 18, 2013</p>	

Approved for signature by CA 7/18/13

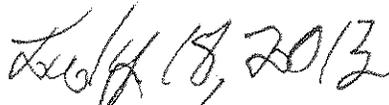
Rule Exception Request

Route completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agsprs@state.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	309.01-125-00	
1. Contract #	09-26568 00	
2. Service Caption	The Contractor will provide Quality Assurance Verification and Validation services for the new Tennessee Consolidated Retirement System pension administration solution (CONCORD) Project.	
3. Contractor	The North Highland Company	
4. Contract Period <i>(with ALL options to extend exercised)</i>	60 months	
5. Contract Maximum Liability <i>(with ALL options to extend exercised)</i>	\$ 3,550,000.00	
6. Rule <i>(for which the exception is requested)</i>	<input type="checkbox"/> 0620-3-3-.03(2)(a) OR 0620-3-3-.05 requiring compliance with relevant model guidelines (only if required by oversight authorities) <input type="checkbox"/> 0620-3-3-.05(5) requiring the prescribed Nondiscrimination contract provision <input checked="" type="checkbox"/> 0620-3-3-.07(5) prohibiting a contract term greater than five (5) years <input type="checkbox"/> 0620-3-3-.07(8) prohibiting a contract with a former state employee in within six (6) months of termination <input type="checkbox"/> 0620-3-3-.07(22) requiring contractor travel reimbursement in accordance with state travel regulations <input type="checkbox"/> OTHER <i>(cite the relevant rule below)</i>	
7. Explanation of Rule Exception Requested	<p>The rule exception request to extend the five (5) year contract term for a period of one (1) year is necessary in order for The North Highland Company ("North Highland") to complete its work in the development and implementation of the Concord Project for the integration of various retirement benefits administration systems into one centralized system. By extending the term of the contract for a one (1) year period, this would allow North Highland to use its skill and expertise to complete its work that is currently in progress to make the new, web-based retirement benefits system functional.</p>	

Request Tracking #	309.01-125-00
8. Justification	<p>The Tennessee Consolidated Retirement System ("TCRS") is entering the final phase of this multi-year project, the Department is asking for a one (1) year extension of the contract term so that North Highland may bring the project to fruition. By allowing TCRS an extension of time relative to this contract, would allow TCRS to complete the Concord Project successfully within the timeframe established by TCRS as dictated by applicable law. North Highland has been working on this project consistently for almost three (3) years, during which period of time, it has developed a thorough understanding of TCRS' current systems and has put an enormous amount of work and resources into the development and implementation of this new system. It would be a disservice to TCRS as well as its membership to waste its time and resources to engage in a competitive procurement when the current contractor has spent its time and resources for approximately three (3) years developing an expertise in this area that would allow the contractor to successfully complete the project. Additionally, to the extent that the Department engaged in a competitive procurement to complete the final phase of this project and it was awarded to another contractor, TCRS would lose all of North Highland's valuable knowledge and expertise, it would lose its rate of progress on the project while another contractor becomes knowledgeable about TCRS' current systems, and ultimately, TCRS may not meet its deadlines for implementation of the project.</p>
Agency Head Signature and Date <i>(contracting agency head or authorized signatory)</i>	
 	

Approved for signature by CH 7/19/13



CONTRACT AMENDMENT

Agency Tracking # 309-.01-125-09	Edison ID 09-26568 00	Contract # 09-26568 00	Amendment # 1		
Contractor Legal Entity Name The North Highland Company			Edison Vendor ID 30884		
Amendment Purpose & Effect(s) To extend the term of the contract and increase the contract's maximum liability					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: November 30, 2014			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 400,000.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2015				\$400,000.00	\$400,000.00
TOTAL:				\$400,000.00	\$400,000.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>OCR USE</i>	
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT 1
OF CONTRACT 09-26568 00**

This Amendment is made and entered by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State" and The North Highland Company, hereinafter referred to as the "Contractor". It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

Section B in the Contract shall be amended by deleting the language "November 30, 2013" and substituting it instead with the language "November 30, 2014".

Section C.1 in the Contract shall be amended by deleting the language and numbers "three million one hundred fifty thousand dollars (\$3,150,000.00)" and substituting it instead with the language and numbers "three million five hundred fifty thousand dollars (\$3,550,000.00)".

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective October 1, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

THE NORTH HIGHLAND COMPANY:

NANCY C. SCHULTZ, VICE PRESIDENT

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., STATE TREASURER

DATE

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TREASURY DEPARTMENT
AND
THE NORTH HIGHLAND COMPANY

This Contract, by and between the State of Tennessee, Treasury Department, hereinafter referred to as the "State" and The North Highland Company, hereinafter referred to as the "Contractor," is for the provision of Quality Assurance / Independent Verification and Validation (QA / IV&V) services, as further defined in the "SCOPE OF SERVICES."

The Contractor is for-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 58-1823492

Contractor Place of Incorporation or Organization: Georgia

A. SCOPE OF SERVICES:

A.1. In General. The Contractor shall provide all services and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. General Scope of the QA / IV&V Project. The Contractor shall provide QA / IV & V services for the new Tennessee Consolidated Retirement System (TCRS) pension administration solution (CONCORD) Project by monitoring and tracking the processes, products, and deliverables of both the CONCORD System Implementation Vendor (SIV) and the State. Complete requirements for the CONCORD Project are contained in RFP # 309.01-114. The Contractor shall use the tools provided by the SIV vendor to track progress, issues, risks and resolutions as well as become the repository for outputs under version control. The State anticipates using Microsoft Project and Microsoft Project Server for this purpose. The State expects the Contractor to begin work at least two weeks in advance of the commencement date (start date) of the CONCORD SIV contract as stated in Section B of Attachment 6.1 of the SIV RFP. The lead time will allow the Contractor to familiarize itself with the State's organizational makeup, business practices, the CONCORD RFP, the winning CONCORD proposal, and other critical factors that should be reviewed prior to the SIV beginning work.

The State reserves the right to move the commencement date for the services described herein to a future date if the SIV Contract is not awarded as planned. The State's authorization for the Contractor to begin work is contingent upon the successful award of the CONCORD SIV Contract, RFP # 309.01-114. If a successful contract award of the CONCORD SIV RFP # 309.01-114 is not achieved, the State reserves the right to cancel this Contract. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- a. The Contractor shall provide all contract services and deliverables under the oversight of the TCRS Steering Committee.
- b. The Contractor must work with the State's Quality Assurance organization and collaborate with them to develop mutual understanding of the State's and the Contractor's policies and procedures in establishing the quality environment and providing quality management services for this Contract.
- c. The Contractor shall provide independent advice and evaluation to the State's CONCORD Project Manager and assist the State's CONCORD Project Manager in all tasks of the project as described herein.
- d. The Contractor shall advise the SIV of any issues/risks/problems identified by the Contractor that are within the scope of the SIV's contract in order to facilitate early resolution. If there are any questions regarding the scope of the problems/issues identified by the Contractor, these shall be discussed with the State's CONCORD Project Manager prior to presentation to the SIV.

A.3. Types of Services. At a minimum, the Contractor shall provide the following:

- a. Project Quality Management – develop and implement the Quality Management (QM) Plan, standards and quality management processes, quality checklists, quality controls, metrics,

- monitoring and analysis. Provide review, monitoring and reporting on the baseline project plan. Provide QM presentations as necessary.
- b. Assessment – review of key project documentation (i.e., business requirements, technical documentation, management plans and project reports) and interviews with key business and technical staff.
 - c. Quality Control (QC) activities over products and processes and deliverables. Monitor and review and report on QC activities and deliverables.
 - d. Monitoring and reporting of activities and deliverables of the SIV, including conducting or monitoring code reviews and evaluating code efficiency.
 - e. Independent quality assurance activities and reports. Review and evaluate and report on QA for all major activities and phases of the CONCORD project.
 - f. Evaluate, identify and recommend adjustments to required activities, tasks, resources, schedule and scope.
 - g. Review, evaluate and report on Risk Assessment. Ongoing risk notification and monitoring. Quarterly risk analysis and QA on the Project.
 - h. Review, evaluate and report on security test plans and execution.
 - i. Review, evaluate and report on conversion of legacy system databases and data.
 - j. Review, evaluate and report on all documentation, including user and system documentation, and all training materials.

These services are further detailed in Contract Sections below and the Contract Attachments.

A.4. IV&V Project Quality Management and Testing Requirements

- a. Quality Management Plan. Within sixty (60) calendar days of the QA / IV&V start date, the QA / IV&V Contractor shall develop an initial Quality Management (QM) Plan for the QA / IV&V project. A copy of the initial and final QM Plan shall be provided to TCRS. The Contractor shall maintain and keep this plan up-to-date throughout each of the contract term. The QM Plan shall show both State and Contractor respective responsibilities and planned activities regarding project quality. It must cover, at a minimum, the following topics from the standard:
 - i. Purpose and scope of the plan, including identifying related project management documents.
 - ii. Project quality objectives and the metrics needed to assess progress toward those objectives. Each identified metric shall be fully defined in terms of:
 - o Purpose and expected use.
 - o Definition of data elements used in the metric.
 - o Collection, calculation, and reporting method, schedule, and responsibility.
 - iii. Standards to be used in the project (these may be references to external documents).
 - iv. SIV oversight activities, such as deliverable reviews.
 - v. Executive-level, milestone or payment-point review activities.
 - vi. Other QM activities such as Contractor self-assessments and project defect reporting and resolution processes.
 - vii. The Contractor shall schedule tasks and resources in the Quality Assurance (QA) Work Plan described below, to accomplish the QM Plan's defined activities. Where such activities require State tasks and resources, the Contractor shall obtain commitments from the State and incorporate them into the QA Work Plan.
 - viii. The Contractor and State shall each provide a sign-off that the QM Plan is accurate and that each shall meet its responsibilities as defined in the plan.
 - ix. The State and Contractor shall work together to keep the QM Plan up to date with current activities and responsibilities. The Contractor must obtain prior State approval to change Contractor activities and responsibilities documented in the QM Plan.
 - x. The Contractor shall periodically review the QM Plan and evaluate project performance against the planned goals and objectives. To support this self-

business day after the date the QA / IV&V Contractor submits the deliverable to the State for review. The State will formally communicate to the QA / IV&V Contractor in writing all deficiencies found in a QA / IV&V deliverable.

- A.6. Quality Assurance (QA) Work Plan. Within sixty (60) calendar days of the QA / IV&V start date, the QA / IV&V Contractor shall develop an initial QA Work Plan. The QA / IV&V Contractor shall maintain an up-to-date QA Work Plan of all project tasks, activities and resources including a project schedule detailing estimated start and completion dates, actual start and completion dates, estimated and actual task hours, the resource(s) allocated for each task, any predecessors or dependencies associated with the task, and completion percentages for all in-process tasks. The State expects that the QA Work Plan shall be documented and updated on an on-going basis to reflect the current status of the project. Both the State and the SIV shall provide the QA / IV&V Contractor with the information and assistance necessary to timely and thoroughly verify and validate project status and quality / accuracy of deliverable work products. The QA / IV&V Contractor shall modify and synchronize the QA Work Plan with the winning SIV proposal. The QA Work Plan must meet the following general requirements:
- a. Detail the QA / IV&V Contractor's plans and approaches to completing all tasks.
 - b. Update in conjunction with the weekly, monthly and quarterly reporting requirements.
 - c. Allow the State five (5) business days to review the QA / IV&V deliverables (the weekly, monthly and quarterly status reports do not require a five (5) day deliverable review).
- A.7. QA Status and Activity Documentation / Meetings. Unless otherwise stated in this contract, any and all tasks requiring documentation, including but not limited to assessments, analysis, and recommendations, must be submitted to the TCRS Steering Committee.
- a. Weekly Reporting Requirements. The QA / IV&V Contractor shall be required to attend weekly meetings and submit weekly status reports to the CONCORD Project Manager that identify and address issues as they arise. Topics to be covered include:
 - i. An overview of key project events occurring in the prior week.
 - ii. A discussion of any departures from the project schedule along with the reasons for the departures and recommendations for getting back on schedule.
 - iii. A preview of critical project events coming up in the near future.
 - iv. An overview of staffing changes or concerns.
 - v. A listing of all open action items and the date opened.
 - vi. An overview of any identified risk factors.
 - vii. An overview of resolutions to any action items or issues since the last report.
 - viii. A general overview of the project status.
 - b. Monthly Reporting Requirements. The QA / IV&V Contractor shall be required to submit a monthly QA Status and Activity Report to the TCRS Steering Committee that includes the major QA activities accomplished for the current reporting period and QA activities planned for the next review period. The report should include, at minimum, an assessment of the effectiveness of the SIV and the State and provide definitive answers to the questions in the following areas:
 - i. Have constraints and their potential impact on the organizational structure been identified?
 - ii. Is information channeled effectively? Is feedback processed appropriately?
 - iii. Is there an adequate level of stakeholder participation?
 - iv. Has there been a quantitative assessment of staffing levels to ascertain the appropriate level of involvement? Are individuals participating at the expected level?
 - v. Is a formalized critical path in place? Is it inclusive? Are directional changes incorporated at the point of occurrence?
 - vi. What is the methodology for ensuring timeframes are met and potential delays identified?
 - vii. Are key determinations made at the appropriate juncture, at the appropriate level, and do they produce the appropriate solution?

- viii. Are the milestones valid? Will they be achieved based on the existing detailed work plans?
 - ix. Are the appropriate techniques and procedures being used for problem resolution?
 - x. Do deadlines reflect current project status, are they being met, and are they reasonable?
- c. Quarterly Reporting Requirements. At a minimum, the QA / IV&V Contractor must provide the TCRS Steering Committee with an Analysis / Risk Assessment Report on a quarterly basis throughout the period of the Contract. In addition, the QA / IV&V Contractor must deliver risk assessment and project status presentations to the TCRS Steering Committee and other stakeholders on an as-requested basis. This task will provide the committee members and stakeholders with a verbal and written assessment of the project status and make recommendations on any risk mitigation or corrective action necessary to keep the project on schedule.
- d. Summary Reporting Requirements. The QA / IV&V Contractor shall submit a summary report to the TCRS Steering Committee within two business days after discovery of the following:
- i. Any and all significant or serious deficiencies, risks, or concerns with CONCORD's quality, design, development or implementation.
 - ii. Any other circumstances which have caused or in the Contractor's sold judgment may cause a negative impact on the project, the CONCORD, its design, development, implementation, cost, or time for completion.

The intent of the Summary Report is for the QA / IV&V Contractor to report issues which, in the judgment of the QA / IV&V Contractor, are of sufficient magnitude that they should not wait until the issuance of the weekly report before being brought to the attention of the State.

- e. Weekly Status Meetings. The QA / IV&V Contractor must attend and participate in weekly project status meetings with the State and SIV and identify any other threats to the project schedule and / or to the project plan and recommend mitigation strategies.

A.8. Additional Work. The State may request, at its sole discretion, the Contractor to perform additional work for which the Contractor would be compensated. That work shall be within the general scope of this Contract. Remuneration for any such Consulting Services shall be based on the applicable "contingent" payment rate(s) detailed in Section C.3.b of this Contract.

- a. There is no guarantee that the State will use any of the QA / IV&V Contractor's Consulting Services for additional work. The State retains full control as to the timing and usage of Consulting Services.

A.9. Consulting Services.

- a. The QA / IV&V Contractor must provide Contractor Personnel with the following job classifications and qualifications:
- i. Quality Assurance Manager (Key Personnel). The QA Manager, at a minimum, shall have the following qualifications:
 - o Five (5) years experience in QA / IV&V and five (5) years recent experience as a project manager of substantive Automated Data Processing projects involving monitoring and overseeing systems development and design, including formulation and enforcement of standards and procedures to support the entire System Development Life Cycle (SDLC); for a total of ten (10) years experience overall.
 - o Recent, direct management or analysis experience within a large financial system environment.
 - o A Bachelor degree from an accredited institution; preferably in accounting, business administration, computer or management science, or a related field.

The responsibilities of the QA Manager will typically include the following:

- o Organizing, directing, and coordinating planning and production of all QA contract technical services activities.

- Providing oral and written communications with all levels of management for planning and control of the project.
 - Interfacing with all levels of government and implementation contractor management.
 - Formulating and monitoring plans and schedules, determining and controlling costs, and ensuring conformance with project requirements, standards, practices, and procedures.
 - Assigning, scheduling, and reviewing work of subordinates.
 - Interpreting policies, purposes, and goals of the organization for subordinates.
- ii. Senior Quality Assurance Analyst(s) (Key Personnel). The Senior Quality Assurance Analyst(s), at a minimum, shall have the following qualifications:
- Minimum of three years experience in large-scale government system implementations and at least three years experience in QA / IV&V for a total of six years experience overall.
 - Recent, direct analysis experience within a large financial systems environment.
 - A Bachelor degree from an accredited institution; preferably in accounting, business administration, computer or management science, or extensive experience in projects similar to this one may be substituted for specifically related undergraduate degree.

The responsibilities of the Senior Quality Assurance Analyst(s) will typically include the following:

- Under the supervision of the QA Manager, performs and leads all aspects of analysis and design and assures that development and implementation of CONCORD is satisfactory.
 - Performs supervisory, technical, and administrative direction for personnel monitoring software development and modification, reviews products for correctness, ensures adherence to the design concept and project standards, and validates progress per schedules.
 - Provides highly technical expertise and guidance for applications software, quality assurance, quality control, and use of software tools.
 - Provides oral and written communications with QA contract management for planning and control of task assignment performance.
 - Interfaces with appropriate levels of government and implementation contractor management and staff to plan and present new / modified software concepts and develop test plans.
 - Perform functional / performance testing as required.
 - Perform other QA duties as determined by the QA Manager.
- iii. Quality Assurance Analyst(s). The Quality Assurance Analyst(s), at a minimum, shall have the following qualifications:

- Bachelor degree preferred; minimum of three years experience in QA / IV&V in a position that requires review of internal processes, such as quality control, application review and / or functional / performance testing.
- Written communications skills for preparing narrative assessment reports, correspondence, and instruction, demonstrating the ability to capture ideas in writing, using correct grammar.
- Analytical skills for conducting internal assessments, understanding and applying standards consistently, and addressing situational nuances.
- Problem solving skills for handling unexpected audit situations.

The responsibilities of the Quality Assurance Analyst(s) will typically include the following:

- Perform quality reviews and quality control of the CONCORD System Implementation Vendor performance against federal and state requirements.

- o Gathers and analyzes quality statistics to determine trends and document findings for management.
- o Perform functional / performance testing as required.
- o Perform other QA duties as determined by the QA Manager.

The QA / IV&V Contractor shall assign all personnel, as identified in their proposal, to complete all of their planned and assigned responsibilities in connection with performance of the obligations of the QA / IV&V Contractor under this contract. The QA / IV&V Contractor shall make all reasonable efforts to provide continuity of personnel throughout the contract term.

- b. The proposed individuals should possess the requisite skills and certifications for the roles they are filling. At a minimum, all individuals must:
- i. Possess exceptional interpersonal skills and the ability to work effectively in a fast-paced, team-oriented environment.
 - ii. Must be able to proficiently read and speak the English language.
 - iii. Possess advanced writing, verbal, and presentation skills.
 - iv. Be able to work independently, leverage previous experience, and lead specific tasks.
 - v. Be knowledgeable in system requirements definition and analysis, system design, project management, test plan definition and execution, and performance measurement.

In addition, the following general qualifications are preferred but not required:

- vi. Possess training and certifications in relevant areas such as:
 - o Project Management Professional (PMP).
 - o Certified Software Quality Engineer (CSQE).
 - o Certified Manager of Quality/Organizational Excellence (CMQ/OE).
 - o Certified Quality Auditor (CQA).
 - o Professional Risk Management (PRM).
 - o Other related certifications such as Certified Information Systems Auditor.
 - vii. Have recent (within the past 3 years) experience in QA auditing and project management.
- c. If the State requests additional work, as detailed in Section A.8 above, the QA / IV&V Contractor shall be required to provide a highly skilled and experienced team of quality assurance professionals to ensure effective quality assurance processes and monitoring activities. These team members shall, at minimum, meet the standards outlined in A.9.b. above.
- d. The State shall have the right to approve the assignment and replacement by the QA / IV&V Contractor of all personnel assigned to provide services. Before assigning an individual, the QA / IV&V Contractor shall notify the State of the proposed assignment, shall introduce the individual to the appropriate representatives of the State, and shall provide to the State a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting approval. The State will approve or disapprove an individual's assignment no later than one (1) business day after the receipt of all requested information and/or completion of a requested interview, depending on which event occurs last.

In the event any one of the QA / IV&V personnel is reassigned, becomes incapacitated, or ceases to be employed by the QA / IV&V Contractor and therefore becomes unable to perform the functions or responsibilities assigned to him or her, the QA / IV&V Contractor shall:

- i. within five (5) business days, temporarily replace such person with another person properly qualified to perform the functions of such replaced person, and

- ii. within twenty (20) business days, permanently replace such replaced person with another person approved by the State and properly qualified to perform the functions of such replaced person.

The State reserves the right to require the QA / IV&V Contractor to replace Contractor and / or subcontractor employees whom the State judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the State.

Before a written request is issued, authorized representatives of the State and the QA / IV&V Contractor will discuss the circumstances. Upon receipt of a written request from an authorized representative of the State, the QA / IV&V Contractor shall be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. The QA / IV&V Contractor shall use its best efforts to effect the replacement in a manner that does not degrade service quality. This provision will not be deemed to give the State the right to require the QA / IV&V Contractor to terminate any Contractor employee's employment. Rather, this provision is intended to give the State only the right to require that the QA / IV&V Contractor discontinue using an employee in the performance of services for the State.

All QA / IV&V Contractor personnel must review the Acceptable Use Policy for Network Access Rights and Obligations and sign the User Agreement Acknowledgement located at Contract Attachment B.

- A.10. Planning and Initiation Tasks and Deliverables. The QA / IV&V Contractor shall complete the following Planning and Initiation Tasks and Deliverables within sixty (60) calendar days of the QA / IV&V start date, or as otherwise noted below. The State expects these Tasks and Deliverables to be provided as they are completed; that is, these Tasks and Deliverables are not to be provided in one package at the end of the sixty (60) calendar days. The State understands that some tasks are dependent upon the SIV Contract Start date and deliverable dates may need to be adjusted.
- a. State's Structure and Business Practices. Within sixty (60) calendar days of the QA / IV&V start date, the QA / IV&V Contractor's project team must familiarize the QA / IV&V staff with the structure and business practices of the Treasury Department's TCRS. Key Treasury Department staff will support the project team in accomplishing this requirement.
 - b. Develop and Maintain the Quality Management Plan. Within sixty (60) calendar days of the QA / IV&V start date, the QA / IV&V Contractor must develop the initial QM Plan per A.4 above. The QA / IV&V Contractor shall maintain and keep this QM Plan up-to-date throughout the remaining contract phases.
 - c. Develop and Maintain the Quality Assurance Work Plan. Within sixty (60) calendar days of the QA / IV&V start date, the QA / IV&V Contractor must develop the initial Quality Assurance Work Plan per A.6 above. The QA / IV&V Contractor shall synchronize the QA Work Plan with the winning SIV proposer. Afterwards, the QA / IV&V Contractor shall maintain and keep this Quality Assurance Work Plan up-to-date throughout the remaining contract phases.
 - d. Develop an Issue and Action Item Management Plan. Within sixty (60) calendar days of the QA / IV&V start date, the QA / IV&V Contractor must develop the initial Issue and Action Item Management Plan that will be used to track issues noted by the QA / IV&V Contractor as requiring resolution. This tool shall track all open items and indicate who is responsible for the resolution, action needed, date opened, and due date.

This tool may be the same as the Problem Incident Reporting Tool to be developed by the SIV. TCRS is currently leaning toward a product called "TeamTrack" for Problem Incident Reporting. If the Problem Incident Reporting Tool is used also for Issue and Action Item Management, the QA / IV&V Contractor must develop and document a process agreeable to the SIV for sharing this tool.

Afterwards, the QA / IV&V Contractor shall assure that this agreed process is followed so that the Issue and Action Item Management Plan stays up-to-date throughout the remaining contract phases.

- e. Project Plan Assessment Report(s). Within sixty (60) calendar days of the QA / IV&V start date, the QA / IV&V Contractor must provide project plan assessment report(s) as described below:
- i. Project Structure - the QA / IV&V Contractor must review and evaluate the overall project structure (State and SIV) and assess the project team's ability to perform and meet the goals and objectives as set out in the CONCORD RFP.
 - ii. Project Plan - the QA / IV&V Contractor must review the proposal of the SIV selected by the State and provide the State with an assessment of the adequacy and feasibility of the project plan and schedule. This assessment should provide specific areas of concern, if any, the rationale for the concern and recommendations for specific mitigation strategies, if appropriate.
 - iii. Project Management Methodology - the QA / IV&V Contractor must review and evaluate the proposed project management methodology of the State and SIV to ensure that it follows industry standards and adequately addresses all components of the system development process.
- f. Develop Deliverable Review and Document Control Process. Within sixty (60) calendar days of the QA / IV&V start date, the QA / IV&V Contractor must prepare and obtain State approval of the procedures to be used in the QA review of project plans, schedules, activities, and deliverables of the selected SIV. The QA / IV&V Contractor shall also obtain State approval of the formats for all status reports. The QA / IV&V Contractor shall use document tracking tool(s) approved or specified by the State and develop the document control procedures to be used for all project reviews and reports. These procedures are to ensure that critical project documentation is maintained in a structured and secure manner.
- g. Dispute Resolution Process. Disputes between the QA / IV&V Contractor and the CONCORD System Implementation Vendor with respect to project activities and deliverables under QA / IV&V review will be resolved at the lowest possible level. The QA / IV&V Contractor and SIV Management should meet to discuss and come to a mutually agreeable solution to any issues that arise. If the issue cannot be resolved at this level, the QA / IV&V Contractor and SIV management will meet with the State's CONCORD Project Manager to resolve the issue. If the issue cannot be resolved at the CONCORD Project Manager level, then QA / IV&V Contractor, SIV and the State's CONCORD Project Manager will take the issue to the TCRS Steering Committee for resolution.
- A.11. CONCORD System Implementation Vendor (SIV) Tasks and Deliverables. The QA / IV&V Contractor shall monitor and assess the overall performance of the SIV and the State during each phase of the CONCORD Project. The QA / IV&V Contractor must review and evaluate the SIV and State tasks and deliverables as set out in the CONCORD RFP, and any additional deliverables proposed by the SIV and agreed to by the State.

Listing of (Minimum Set of) SIV Deliverables and Milestones.

Nbr	Deliverable
1	Initial Detail Work Plan
2	Complete Detail Work Plan
3	Project Communications Plan
4	Concept of Operations Document
5	Development Methodology Overview – End User Document
6	Installation and Configuration of Proposed Hardware
7	Installation and Configuration of Proposed Commodity Software
8	Statements of Work (SOWs)
9	Completion of Risk Management Reporting Methodology
10	Process Change Plan
11	Organizational Change Plan
12	Transition Management Plan
13	Updated Requirements Traceability Matrix
14	Completion of Imaging Training Materials

15	Completion of Imaging Test Plans
16	Implementation of ECM (Imaging)
17	Detailed Requirements Definition
18	Completion of Detailed System Design Specification
19	Installation of and Configuration of Line-of-Business Application
20	Completion of Data Conversion and Migration Plan(s)
21	Completion of Data Bridging Plan(s)
22	Completion of Test Plans
23	Completion of Change Control Methodology
24	Completion of Problem Incident Reporting Methodology
25	Completion of System Security Plan
26	Completion of Rollout Plan
27	Completion of Training Plan and Training Materials
28	Completion of Modifications to Line-of-Business (LOB) Application
29	Integration with Existing Financial Capabilities
30	Integration Workflow Management Capabilities
31	Completion of Training
32	Delivery of Documentation
33	Completion of Unit Testing by the Proposer per Phase
34	Completion of System Testing by the Proposer per Phase
35	Commencement of User Acceptance Test (UAT) per Phase
36	Acceptance of the System by Users per Phase
37	Completion of the Conversion Process per Phase
38	Delivery of Source Code
39	Weekly Status Reports and Meetings
40	Monthly Steering Committee Meetings
41	LOB Application Software License
42	Warranty

- a. The QA / IV&V Contractor shall issue a written report as to the degree to which each SIV deliverable meets State requirements and the terms of the Contract, including a recommendation that the State accept or reject the deliverable and the justification for the recommendation.
- b. The QA / IV&V Contractor shall recommend corrective action when activities or deliverables fail to achieve the standards established in the QM Plan, CONCORD RFP, the SIV's proposal, or the Contract.
- c. Requirements Traceability Matrix. The QA / IV&V Contractor must use the SIV's Requirements Traceability Matrix to map to the State's CONCORD requirements to ensure that all State functional, business and technical requirements are being addressed. This will be an ongoing task throughout the remainder of the CONCORD project phases.
- d. QA Status and Activity Documentation / Meetings. The QA / IV&V Contractor must accomplish the QA Status and Activity Documentation / Meetings per the requirements listed in Section A.7 above. This will be an ongoing task throughout all CONCORD project phases.
- f. Configuration Management and Tracking. The QA / IV&V Contractor must ensure that appropriate configuration management and tracking has been established and documented by the SIV and State and that software defects are addressed in a timely fashion. The SIV shall propose and the State will establish configuration control. Based upon State provided guidance, the QA / IV&V Contractor shall review and recommend priority for fixes and enhancements for software defects and other issues that arise.
- g. Database Analysis. The QA / IV&V Contractor shall evaluate the database design as part of the design review process to include the following:

- i. Physical Limitations Analysis - Identify the physical limitations of the database, such as maximum number of records, maximum record length, largest numeric value, smallest numeric value, and maximum array length in a data structure and compare them to designated values.
 - ii. Index vs. Storage Analysis - Analyze the use of multiple indexes compared to the volume of stored data to determine if the proposed approach meets the requirements for data retrieval performance and size constraints.
 - iii. Data Structures Analysis - Review the use of data structures for potential impact on requirements for data storage and retrieval.
 - iv. Backup and Disaster Recovery Analysis - Review the methods employed for backup against the requirements of data recovery and system disaster recovery and identify deficiencies.
- h. Assess the Impact of Scope of Work Changes. The QA / IV&V Contractor shall assess the impact of scope of work changes as described below:
- i. The QA / IV&V Contractor must assess the impact of changes being proposed to the SIV scope of work during the Design Phase and throughout the Contract. The following process shall be followed for assessing the impact of proposed changes to the scope of work:
 - ii. All requests for change will be brought to the State CONCORD Project Manager for initial evaluation. The QA / IV&V Contractor may advise and assist the CONCORD Project Manager in initial evaluation.
 - iii. A Change Request will be generated by the State CONCORD Project Manager describing the change and why it is important that the requirements change(s) be made. The QA / IV&V Contractor may advise and assist the CONCORD Project Manager in evaluating and preparing the Change Request.
 - iv. The State CONCORD Project Manager will review the change request with appropriate TCRS staff to determine the validity of the requested change to approved requirements / scope of work. If the change request is valid, the Change Request will be forwarded to the SIV's Project Manager.
 - v. The SIV's Project Manager will respond to such change requests with a written proposal for completing the change. The proposal for implementing the change – i.e., the change order – must be delivered to TCRS by the SIV within ten (10) business days of the SIV's receipt of the written request for the change. The change order must define the effort involved in implementing the change, the expected schedule for implementing the change, the total cost of implementing the change, and the effect, if any, of implementing the change on all pertinent project services and schedules.
 - vi. The QA / IV&V Contractor will provide an independent assessment within 5 business days on how the change will impact the CONCORD project (summarize impact to functional, technical, quality, and implementation (e.g., cost/schedule) requirements, whether the change is necessary, how the change affects work already completed.)
 - vii. The State CONCORD Project Manager will review the assessment and approve / disapprove the request (if the impact is minor) or make a recommendation to the TCRS Steering Committee.
 - viii. The TCRS Steering Committee will review the Change Request(s) and formally approve / disapprove the request within fifteen (15) business days of receiving the Change Request.
- i. Responses to Discrepancies. The QA / IV&V Contractor must review and report on the sufficiency of the SIV's written response to discrepancies identified during this and subsequent project phases with particular emphasis on preparation and conduct of testing.
 - j. System Verification and Validation. The QA / IV&V Contractor must assist the State in verifying and validating that all construction / development, testing, and installation of software is done in such a manner that it meets all the State's business, functional and technical

requirements of the system. This will be an ongoing task throughout the remainder of the project phases.

The QA / IV&V Contractor, with the State and SIV Contractor, will participate in the following walk-throughs:

- i. Design - Participate in a walk-through of the design and updates of the design to ensure completeness, correctness, technical integrity, and quality.
 - ii. Requirements - Participate in a walk-through of the requirements specification to ensure that the software requirements are correct, unambiguous, complete, verifiable, consistent, modifiable, traceable, testable, and usable throughout the lifecycle.
 - iii. Source Code - Participate in a walk-through of the source code to ensure that the code is complete, correct, maintainable, free from logic errors, conforms to coding standards and conventions, and will operate efficiently.
 - iv. Test - Participate in a walk-through of the test documentation to ensure that the planned testing is correct, complete, and that the test results will be correctly analyzed.
- k. The QA / IV&V Contractor shall provide Source Code and Source Code Documentation Evaluation – Evaluate the source code components (source code and source code documentation) for correctness, consistency, completeness, accuracy, readability, and testability. The task criteria are:
- i. Correctness
 - o Verify and validate that the source code component satisfies the software design.
 - o Verify that the source code components comply with standards, references, regulations, policies, physical laws, and business rules.
 - o Validate the source code component sequences of states and state changes using logic and data flows coupled with domain expertise, prototyping results, engineering principles, or other basis.
 - o Validate that the flow of data and control satisfy functionality and performance requirements.
 - o Validate data usage and format.
 - o Assess the appropriateness of coding methods and standards.
 - ii. Consistency
 - o Verify that all terms and code concepts are documented consistently.
 - o Verify that there is internal consistency between the source code components.
 - o Validate external consistency with the software design and requirements.
 - iii. Completeness
 - o Verify that the following elements are in the source code, within the assumptions and constraints of the system:
 - ◆ Functionality (e.g., algorithms, state / mode definitions, input / output validation, exception handling, reporting and logging).
 - ◆ Process definition and scheduling.
 - ◆ Hardware, Software, and User Interface Description.
 - ◆ Performance Criteria (e.g., timing, sizing, speed, capacity, accuracy, precision, safety, and security).
 - ◆ Critical Configuration Data.

- ◆ System Device and Software Control (e.g., initialization, transactions and state monitoring, and self-testing).
- ◆ Verify that the source code documentation satisfies specified configuration management procedures.

iv. Accuracy

- Validate the logic, computational and interface precision (e.g., truncation and rounding) in the system environment.
- Validate that the modeled physical phenomena conforms to system accuracy requirements and physical laws.

v. Readability

- Verify that the documentation is legible, understandable, and unambiguous to the intended audience.
- Verify that the documentation defines all acronyms, mnemonics, abbreviations, terms and symbols.

vi. Testability

- Verify that there are objective acceptance criteria for validating each source code component.

l. Independent Capacity Evaluation. The QA / IV&V Contractor shall:

- i. Assist the State in determining if SIV conducted capacity evaluation (load / performance) testing is adequate by observing and validating the SIV's capacity evaluation testing methods and results.
- ii. Request the SIV perform multiple iterations of capacity evaluation testing if required to adequately evaluate capacity load / performance results.
- iii. Evaluate the Capacity Evaluation Report and advise the State whether the report should be approved.

m. Training Adjustments. The QA / IV&V Contractor must make recommendations regarding training adjustments as necessary.

n. System, User and Training Documentation Evaluation. The QA / IV&V Contractor shall:

- i. Evaluate the CONCORD system, user, and training documentation created by the SIV contractor to ensure it is complete, correct, consistent, readable, and maintainable.
- ii. Evaluate the procedures for completeness, correctness, and consistency with respect to requirements for user interface and for any functionality that can be invoked by the user.
- iii. Verify that the State possesses all new system artifacts and documentation needed to allow the State to establish, operate and maintain a CONCORD operational environment so it or a designated entity can operate the CONCORD within acceptable operational parameters.

o. Life Cycle Reviews. The QA / IV&V Contractor shall make recommendations at identified life cycle reviews as described below:

- i. The QA / IV&V Contractor must make recommendations at life cycle reviews with particular emphasis during the Implementation Phase on when or whether to continue rollout beyond Pilot test of the CONCORD project.
- ii. The life cycle review process consists of a series of reviews conducted throughout the product development phases to ensure that each phase of the project is completed successfully. Generally each phase must have a life cycle review conducted and State approval prior to moving on to a subsequent phase. However, with the written permission of the TCRS Steering Committee, a given phase may be started prior to the completion of its predecessor.

- iii. Life cycle review participants include the TCRS Steering Committee, State Project Staff and Contractor Project Staff (QA / IV&V and SIV).
- iv. At the end of each phase the State will conduct a life cycle review in order to:
 - o Ensure that project direction and goals remain consistent with the organization's strategic (business) plan and goals;
 - o Provide an evaluative process and opportunity to justify termination of projects which fail to demonstrate an adequate return on investment;
 - o Measure the ongoing progress (i.e., budget, schedule and deliverables) and identify potential problems for corrective actions; and,
 - o Approve phase results and authorize further work.
- v. The QA / IV&V Contractor shall make a recommendation to the TCRS Steering Committee at each Life Cycle Review whether to approve current phase results and authorize work to begin on the next phase.
- p. User Satisfaction. The QA / IV&V Contractor must gauge user satisfaction with the system during pilot testing and implementation. The QA / IV&V Contractor must describe in detail the processes and the functions they will initiate as an independent analyst of user issues and concerns that need to be brought to the attention of the State.
- q. Post Implementation Analysis Report. The QA / IV&V Contractor must prepare a Post Implementation Analysis Report within 30 days of CONCORD implementation that provides information regarding the benefits and success of the system, identifies future risks, verifies that all artifacts are in place and under configuration management, and provides lessons learned which can be used for subsequent development projects.
- r. Warranty Period. The QA / IV&V Contractor must be available to advise the State and evaluate SIV performance during the period that starts with the rollout of the first functional capability and concludes twelve (12) months after the rollout of the final capability.

A.12. Miscellaneous Policies and Procedures

- a. Parking. The State will not provide parking for Contractor personnel.
- b. State Clinic. Contractor personnel do not have access to the State clinic.
- c. State Vehicles. Contractor personnel may not reserve and / or operate State vehicles.

A.13 On- and Off-Site Work

- a. Most work under this Contract is to be performed, completed and managed at the Treasury Department's office site or at the SIV's Nashville-area office site or elsewhere as approved by CONCORD Project Manager.
- b. Notwithstanding the above, at the State's discretion, the State may require QA / IV&V Contractor personnel to be on- site in Nashville during any phase of the project if the State deems this to be necessary and in the best interest of the project.
- c. Normal State work hours are 8:00 a.m. to 4:30 p.m., Central Time, with additional hours worked as necessary to meet project deadlines. All work performed on the State's premises shall be completed during the State's standard business hours, unless otherwise agreed to by the State.

A.14. What the State Provides. The State shall provide office space, office supplies, meeting room space, and support services to the Contractor. Support services includes access to help desk support to resolve issues with state facilities such as network connectivity, but generally does not include administrative assistance. The State shall also provide connectivity to the State's network and access to printers, telephones, and copiers. The State shall not supply computers (desktop or laptop), pagers, or cell phones. Additional office space for up to four (4) staff members shall be made available by the SIV in a Nashville-area office site.

A.15. Amending Roles and Responsibilities. The specific roles and responsibilities of personnel shall be as defined in the Contract and RFP; provided, however, that the State reserves the right to amend these

roles and responsibilities, as needed, to others within the required skill sets, if this is deemed to be in the best interest of the State.

- A.16. HIPAA Confidentiality Agreements and Acceptable Use Policy. The Contractor, State-approved subcontractors, and their employees may be required to sign State agency confidentiality agreements, State Acceptable Use Policy agreements (see Contract Attachment B) and/or HIPAA Business Associate Agreements (see Contract Attachment C), in addition to complying with the confidentiality requirements stated herein.
- A.17. State's Technical Architecture. The Contractor shall provide all services under this Contract within the context of the technical environment described by the Tennessee Information Resources Architecture (sometimes referred to as the technical architecture), which is attached hereto as Contract Attachment D.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on December 1, 2008 and ending on November 30, 2013. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three million one hundred fifty thousand dollars (\$3,150,000). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Quality Assurance Manager	\$150 per hour
Senior Quality Assurance Analyst	\$130 per hour
Quality Assurance Analyst	\$100 per hour

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.

d. Contingent Rates. In accordance with section A.8 of this Contract, the State may request and the Contractor may agree to perform additional work within the general scope of this RFP.

- i. Remuneration for any such additional work shall be based on the same rates listed in the Payment Table.
- ii. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State, in form and substance acceptable to the State with all of the necessary supporting documentation, only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment. Such invoices shall be submitted for the amount stipulated for person hours worked and approved by the State.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

CONCORD Project Manager
Tennessee Treasury Department
11th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, TN 37243-0225

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- i. Invoice/Reference Number (assigned by the Contractor);
- ii. Invoice Date;
- iii. Invoice Period (period to which all invoiced charges are applicable);
- iv. Contract Number (assigned by the State to this Contract);
- v. Account Name: Tennessee Treasury Department, Division of Retirement;
- vi. Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- vii. Contractor Name;
- viii. Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- ix. Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- x. Contractor Remittance Address;
- xi. Complete Itemization of Charges, which shall detail the following:
 - o Service Description or Milestone Description (including name /title as applicable) of each service invoiced;
 - o Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - o Applicable Payment Rate (as stipulated in Section C.3.) for each service invoiced;
 - o Amount Due by Service; and
 - o Total Amount Due for the invoice period.

- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and

(3) not include sales tax or shipping charges.

- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- f. Invoices for State approved Change Orders shall be submitted only for completed projects for which the State has provided written acceptance thereof to the Contractor. Such invoices shall, in addition to the information required in C.5.b, include the name of each individual, the individual's job title, the number of hours worked during the project, the hourly rate, the total compensation requested for each individual, and the total amount requested by the Contractor for the Change Order. Such invoices shall also be accompanied with a copy of the signed acceptance by the State.
- g. Invoices for all other services shall be submitted in the increments specified in C.3.b. and intervals specified in C.5.a. but only after written acceptance by the State of the respective deliverables for which the invoice relates. Such invoices shall be submitted in form and substance acceptable to the State with all of the necessary supporting documentation prior to any payment and shall include a copy of the signed acceptance(s) by the State.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor

shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.
- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination shall be effective immediately.
 - b. Notwithstanding the foregoing and subject to Section E.10 of this Contract below, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document

at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability

and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Jill Bachus, Director
Tennessee Consolidated Retirement System
10th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0201
Email Address: jill.bachus@state.tn.us
Telephone Number: (615) 741-7063
Facsimile Number: (615) 401-6819

The Contractor:

Lee J. Malone, Principal
The North Highland Company
100 Winners Circle, Suite 154

Brentwood, Tennessee 37027
Email Address: lmalone@northhighland.com
Telephone Number: (615) 429-5709
Facsimile Number: (615) 370-2797

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
 - i. Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.
 - ii. Errors and Omissions Coverage not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - b. The State shall be added as an additional named insured under said Commercial General Liability policy under the terms and conditions as indicated in the policy language with coverage equal to the liability limits as specified within the policy.
 - c. At any time, the State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

- E.7. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State and/or the SIV or acquired by the Contractor on behalf of the State and/or SIV shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.
- The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's and/or SIV's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.
- The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.
- It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.
- E.8. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.9. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA (see Contract Attachment C). This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.10. Limitation of Liability. The parties agree that the total liability of the Contractor for breach of this Contract shall not exceed two (2) times the value of this contract. The value shall be established by the Contract Maximum Liability in Section C.1 and increased by subsequent amendments if any. The foregoing provision shall not limit the contractor's liability for intentional torts, criminal acts or fraudulent conduct.
- E.11. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments
 - b. All Clarifications and addenda made to the Contractor's Proposal

- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.12. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-309.01-125 (Attachment 6.3, Section B, Item B.13.) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the State of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.

- E.13. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.14. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.

- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

IN WITNESS WHEREOF:

THE NORTH HIGHLAND COMPANY:

Nancy C. Schultz 10/31/08
CONTRACTOR SIGNATURE DATE
Nancy C. Schultz Vice President
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TREASURY DEPARTMENT:

Dale Sims 11/6/08
DALE SIMS, STATE TREASURER DATE

APPROVED:

M. D. Goetz Jr 11/20/08
M. D. GOETZ, JR., COMMISSIONER DATE
DEPARTMENT OF FINANCE AND ADMINISTRATION

John G. Morgan 11/25/08
JOHN G. MORGAN, COMPTROLLER OF THE TREASURY DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	The North Highland Company
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	58-1823492

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

Nancy C. Schultz

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Nancy C. Schultz Vice President

PRINTED NAME AND TITLE OF SIGNATORY

10/31/08

DATE OF ATTESTATION

Acceptable Use Policy and Agreement

STATE OF TENNESSEE Acceptable Use Policy Network Access Rights and Obligations

Purpose:

To establish guidelines for State-owned hardware and software, computer network access and usage, Internet and email usage, telephony, and security and privacy for users of the State of Tennessee Wide Area Network.

Reference:

Tennessee Code Annotated, Section 4-3-5501, et seq., effective May 10, 1994.

Tennessee Code Annotated, Section 10-7-512, effective July 1, 2000.

Tennessee Code Annotated, Section 10-7-504, effective July 1, 2001.

State of Tennessee Security Policies.

Objectives:

- Ensure the protection of proprietary, personal, privileged, or otherwise sensitive data and resources that may be processed in any manner by the State, or any agent for the State.
- Provide uninterrupted network resources to users.
- Ensure proper usage of networked information, programs and facilities offered by the State of Tennessee networks.
- Maintain security of and access to networked data and resources on an authorized basis.
- Secure email from unauthorized access.
- Protect the confidentiality and integrity of files and programs from unauthorized users.
- Inform users there is no expectation of privacy in their use of State-owned hardware, software, or computer network access and usage.
- Provide Internet and email access to the users of the State of Tennessee networks.

Scope:

This Acceptable Use Policy applies to all individuals who have been provided access rights to the State of Tennessee networks, State provided email, and / or Internet via agency issued network or system User ID's. The scope does not include State phone systems, fax machines, copiers, State issued cell phones or pagers unless those services are delivered over the State's IP network.

Use and Prohibitions:

A. Network Resources

State employees, vendors / business partners / sub recipients, local governments, and other governmental agencies may be authorized to access state network resources to perform business functions with or on behalf of the State. Users must be acting within the scope of their employment or contractual relationship with the State and must agree to abide by the terms of this agreement as evidenced by his / her signature. It is recognized that there may be incidental personal use of State Network Resources. This practice is not encouraged and employees should be aware that all usage may be monitored and that there is no right to privacy. Various transactions resulting from network usage are the property of the state and are thus subject to open records laws.

Prohibitions

- Sending or sharing with unauthorized persons any information that is confidential by law, rule or regulation.

- Installing software that has not been authorized by the Office for Information Resources of the Department of Finance and Administration.
- Attaching processing devices that have not been authorized by the Office for Information Resources of the Department of Finance and Administration.
- Using network resources to play or download games, music, or videos that are not in support of business functions.
- Leaving workstation unattended without engaging password protection for the keyboard or workstation.
- Utilizing unauthorized peer-to-peer networking or peer-to-peer file sharing.
- Using network resources in support of unlawful activities as defined by federal, state, and local law.
- Utilizing network resources for activities that violate conduct policies established by the Department of Personnel or the Agency where the user is employed or under contract.

B. Email

Email and calendar functions are provided to expedite and improve communications among network users.

Prohibitions

- Sending unsolicited junk email or chain letters (e.g. "spam") to any users of the network.
- Sending any material that contains viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs.
- Sending copyrighted materials via email that is either not within the fair use guidelines or without prior permission from the author or publisher.
- Sending or receiving communications that violate conduct policies established by the Department of Personnel or the Agency where the user is employed or under contract.
- Sending confidential material to an unauthorized recipient or sending confidential e-mail without the proper security standards (including encryption if necessary) being met.

Email created, sent, or received in conjunction with the transaction of official business are public records in accordance with T.C.A 10-7-301 through 10-7-308, and the rules of the Public Records Commission. A public record is defined as follows:

"Public record(s)" or "state record(s)" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. (T.C.A. 10-7-301 (6)).

State records are open to public inspection unless they are protected by State or Federal law, rule, or regulation. Because a court could interpret state records to include draft letters, working drafts of reports and what are intended to be casual comments, be aware that anything sent as electronic mail could be made available to the public.

C. Internet Access

Internet access is provided to network users to assist them in performing the duties and responsibilities associated with their positions.

Prohibitions

- Using the Internet to access non-State provided web email services.
- Using Instant Messaging or Internet Relay Chat (IRC).
- Using the Internet for broadcast audio for non-business use.
- Utilizing unauthorized peer-to-peer networking or peer-to-peer file sharing.
- Using the Internet when it violates any federal, state or local law.

Statement of Consequences

Noncompliance with this policy may constitute a legal risk to the State of Tennessee, an organizational risk to the State of Tennessee in terms of potential harm to employees or citizen security, or a security risk to the State of Tennessee's Network Operations and the user community, and / or a potential personal liability. The presence of unauthorized data in the State network could lead to liability on the part of the State as well as the individuals responsible for obtaining it.

Statement of Enforcement

Noncompliance with this policy may result in the following immediate actions.

1. Written notification will be sent to the Agency Head and to designated points of contact in the User Agency's Human Resources and Information Technology Resource Offices to identify the user and the nature of the noncompliance as "cause". In the case of a vendor, sub recipient, or contractor, the contract administrator will be notified.
2. User access may be terminated immediately by the Systems Administrator, and the user may be subject to subsequent review and action as determined by the agency, department, board, or commission leadership, or contract administrator.

STATE OF TENNESSEE

**Acceptable Use Policy
Network Access Rights and Obligations
User Agreement Acknowledgement**

As a user of State of Tennessee data and resources, I agree to abide by the Acceptable Use Network Access Rights and Obligations Policy and the following promises and guidelines as they relate to the policy established:

1. I will protect State confidential data, facilities, and systems against unauthorized disclosure and/or use.
2. I will maintain all computer access codes in the strictest of confidence; immediately change them if I suspect their secrecy has been compromised, and will report activity that is contrary to the provisions of this agreement to my supervisor or a State-authorized Security Administrator.
3. I will be accountable for all transactions performed using my computer access codes.
4. I will not disclose any confidential information other than to persons authorized to access such information as identified by my section supervisor.
5. I agree to report to the Office for Information Resources (OIR) any suspicious network activity or security breach.

Privacy Expectations

The State of Tennessee actively monitors network services and resources, including, but not limited to, real time monitoring. Users should have no expectation of privacy. These communications are considered to be State property and may be examined by management for any reason including, but not limited to, security and / or employee conduct.

I acknowledge that I must adhere to this policy as a condition for receiving access to State of Tennessee data and resources.

I acknowledge that I have read the Computer Crimes Act and the State of Tennessee Security Policy 4.00 Access. I understand the willful violation or disregard of any of these guidelines, statute or policies may result in my loss of access and disciplinary action, up to and including termination of my employment, termination of my business relationship with the State of Tennessee, and any other appropriate legal action, including possible prosecution under the provisions of the Computer Crimes Act as cited at TCA 39-14-601 et seq., and other applicable laws.

I have read and agree to comply with the policy set forth herein.

Type or Print Name

Last 4 digits of Social Security Number

Signature

Date

- 2.2 Business Associate agrees to use appropriate procedural, physical, and electronic safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Said safeguards shall include, but are not limited to, requiring employees to agree to use or disclose Protected Health Information only as permitted or required by this Agreement and taking related disciplinary actions for inappropriate use or disclosure as necessary.
- 2.3 Business Associate shall require any agent, including a subcontractor, to whom it provides Protected Health Information received from, created or received by, Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to Protected Health Information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.4 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- 2.5 Business Associate agrees to require its employees, agents, and subcontractors to promptly report to Business Associate any use or disclosure of Protected Health Information in violation of this Agreement. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- 2.6 If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least twenty (20) business days from Covered Entity notice to provide access to, or deliver such information.
- 2.7 If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least ten (10) days from Covered Entity notice to make an amendment.
- 2.8 Business Associate agrees to make its internal practices, books, and records including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.9 Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.10 Business Associate agrees to provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least twenty (20) days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the Protected Health Information was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure.
- 2.11 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of Protected Health Information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.11.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, Protected Health Information shall be the minimum necessary in accordance with the Privacy Rule requirements.

- 2.11.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.11.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Agreement, to comply with the Privacy Rule's minimum necessary requirements when making any request for Protected Health Information from Covered Entity.
- 2.12 Business Associate agrees to adequately and properly maintain all Protected Health Information received from, or created or received on behalf of, Covered Entity.
- 2.13 If Business Associate receives a request from an Individual for a copy of the individual's Protected Health Information, and the Protected Health Information is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for Protected Health Information in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.14 Business Associate agrees to fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

- 3.1 Business Associate agrees to fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Contracts, this Agreement shall govern.
- 3.2 Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule.
- 3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to Protected Health Information supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.4 Business Associate agrees to require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR Section 164.304) of which it becomes aware. Business Associate agrees to promptly report any Security Incident of which it becomes aware to Covered Entity.
- 3.5 Business Associate agrees to make its internal practices, books, and records including policies and procedures relating to the security of electronic Protected Health Information received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.
- 3.6 Business Associate agrees to fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contracts, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity.
- 4.2 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.

4.3 Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any Protected Health Information to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of Protected Health Information and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and / or availability of the Protected Health Information is breached.

4.4 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(I)(B).

4.5 Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).

5. OBLIGATIONS OF COVERED ENTITY

5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of Protected Health Information.

5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses.

5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of Protected Health Information.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

6.1 Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy or Security Rule, if done by Covered Entity.

7. TERM AND TERMINATION

7.1 Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, Section 7.3. below shall apply.

7.2 Termination for Cause

7.2.1. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and / or Security Rule or this Agreement.

7.2.2. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

7.2.2.1. Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or

7.2.2.2. If Business Associate has breached a material term of this Contract and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.

7.2.2.3. If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3. Effect of Termination

7.3.1. Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered

Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- 7.3.2. In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is unfeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such Protected Health Information.

8. MISCELLANEOUS

- 8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and / or Security Rule means the section as in effect or as amended.
- 8.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy and Security Rules, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- 8.3 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Agreement shall survive the termination of this Agreement.
- 8.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 8.5 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by a nationally recognized overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:

Jill Bachus, Director
Tennessee Consolidated Retirement System
10th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0201
Email Address: jill.bachus@state.tn.us
Telephone Number: (615) 741-7063
Facsimile Number: (615) 401-6819

BUSINESS ASSOCIATE:

Lee J. Malone, Principal
The North Highland Company
100 Winners Circle, Suite 154
Brentwood, Tennessee 37027
Email Address: lmalone@northhighland.com
Telephone Number: (615) 429-5709
Facsimile Number: (615) 370-2797

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- 8.6 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

- 8.7 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.
- 8.9 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through the existing Services Contracts referenced herein.

IN WITNESS WHEREOF,

TREASURY DEPARTMENT

Dale Si 11/6/08
Date:

THE NORTH HIGHLAND COMPANY

Marcy C. Schelf 10/31/08
Date:

State's Technical Architecture



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