



OFFICE OF THE ILLINOIS STATE TREASURER  
**MICHAEL W. FRERICHS**

**Request for Proposals**  
**ABLE Services**  
**370-200-16-003**

June 8, 2016

Proposals due by 2:00 p.m. CT on August 1, 2016

Mr. Jim Underwood  
Chief Procurement Officer  
400 West Monroe Street, Suite 401  
Springfield, IL 62704

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Table of Contents

I. Overview .....	3
II. Background.....	3
III. Scope of Services.....	5
IV. Cost Proposal.....	14
V. Proposal.....	15
VI. RFP Schedule and Process .....	29
VII. Evaluation Process and Criteria.....	31
VIII. Contract Terms and Conditions .....	33
Appendix A	Alaska Standard Agreement Form for Professional Services
Appendix B	Iowa Terms and Conditions
Appendix C	Kansas Contractual Provisions Attachment
Appendix D	Minnesota Required Terms and Conditions
Appendix E	Missouri Terms and Conditions – Request for Proposal
Appendix F	Nevada Contract for Services of Independent Contractor and RFP 3221 Insurance Schedule
Appendix G	New Jersey Standard Terms and Conditions
Appendix H	Pennsylvania Terms and Conditions
Appendix I	Rhode Island’s Terms and Conditions
Appendix J	Reporting Requirements
Appendix K	Cost Proposal Spreadsheet

Appendix L Illinois State Treasurer Certifications, Disclosures Financial Interest and Potential Conflicts of Interest (Disclosure Form A), and Disclosures Other Contract and Procurement Related Information (Disclosure Form B)

## **I. Overview**

The Office of the Illinois State Treasurer (“Treasurer”) is issuing this Request for Proposals (“RFP”) for programmatic services for an Achieving a Better Life Experience (“ABLE”) program for the benefit of a multi-state ABLE Consortium (“Consortium”). The Consortium currently consists of Alaska, Illinois, Iowa, Kansas, Minnesota, Missouri, Nevada, New Jersey, Pennsylvania, and Rhode Island (collectively, the “Members”) but, as more fully described below, additional states may be added.

This RFP seeks a provider for the following four core ABLE components: 1) investment management, 2) administrative services, 3) customer service, and 4) outreach material support (collectively, the “Program”). The Consortium welcomes proposals that model a traditional 529 plan design, a Health Savings Account (HSA) approach, or an alternative innovative approach.

Service providers that submit responses (“Respondents”) shall submit their responses to this RFP (“Proposal”) by 2 pm on August 1, 2016. The winning Respondent (“Contractor”) shall enter into an Umbrella Contract with the Treasurer (“Agreement”) and Implementing Agreements with each of the Members, including Illinois.

## **II. Background**

This Section discusses ABLE, the Consortium, and the contracts the Contractor will be entering into with the Treasurer and each Member.

### **A. ABLE**

The Stephen Beck Jr. Achieving a Better Life Experience Act of 2014 was enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014, P.L. 113-295 and codified as Section 529A of the Internal Revenue Code (“ABLE Act”). The federal government acknowledged that the purpose behind the ABLE Act is to address the difficulties people with blindness or a disability may have in being able to afford the additional expenses incurred as a result of their blindness or disability. As a result, the ABLE Act permits states to establish a new type of tax-advantaged savings program that would assist persons with blindness or disability in saving for disability-related expenses without jeopardizing their federal means-tested benefits. States must pass their own legislation to establish an ABLE program.

In order to receive benefits, ABLE account beneficiaries must be disabled, which is defined as being 1) entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act or have a “disability certification” filed with the Secretary of the United States Department of the Treasury and 2) disabled before the age of 26. ABLE funds may be used for a wide range of qualified expenditures, so long as they relate to the Beneficiary’s disability, such as expenses for education, housing, transportation, employment training and support, assistive technology and personal support services,

health, prevention and wellness, financial management and administrative services, legal fees, and expenses for oversight and monitoring, and funeral and burial expenses.

**B. ABLÉ Consortium**

On January 15, 2016, the states of Illinois, Iowa, Kansas, Minnesota, Nevada, and Pennsylvania entered into the ABLÉ Interstate Agreement (“Interstate Agreement”), which established the Consortium. The Interstate Agreement was later amended to add the states of Alaska, Missouri, New Jersey and Rhode Island. Additional states may be added at any time before the expiration of the Agreement. The Consortium appointed Illinois, specifically the Treasurer, to be the state that would procure the Contractor for the benefit of the Consortium.

Each Member has passed legislation, authorizing ABLÉ. In addition, each Member, as resources allow, intends to promote its own ABLÉ plan. Most Members are currently working with local, state and national organizations and agencies that specialize in assisting persons with disabilities, to develop grassroots efforts to maximize the awareness of their respective Program before and after launch.

Per the latest census estimates, the populations of the Members and the entire Consortium are as follows:

State	Population	Estimated Disabled Population (ACS Disability Statistics)
Alaska	738,432	24,295
Illinois	12,859,995	395,074
Iowa	3,123,899	102,300
Kansas	2,911,641	105,936
Minnesota	5,489,594	167,039
Missouri	6,083,672	254,924
Nevada	2,890,845	99,219
New Jersey	8,938,175	257,535
Pennsylvania	12,802,503	503,265
Rhode Island	1,056,298	39,543
<b>TOTAL</b>	<b>56,895,054</b>	<b>1,949,130</b>

This procurement is being conducted pursuant to Illinois law, and the Consortium has approved this RFP.

**C. Contracts**

Once a Contractor is selected, the Contractor shall enter into an Agreement with the Treasurer that sets forth the Services (described below) and the contract terms and

conditions. Each Member, including the Treasurer, will then enter into an Implementing Agreement with the Contractor. Only a Member may enter into an Implementing Agreement with the Contractor. While a Member may leave the Consortium any time before signing an Implementing Agreement with the Contractor, each Member highly desires to achieve the efficiencies and economies of scale that can be afforded through the Consortium. With the consent of the Consortium, other states may become Members at any time before the Agreement is executed. Thereafter, other states may become Members at any time with the consent of the Consortium and the Contractor. A Member shall use its own Implementing Agreement template, which shall contain details specific to the Member, including, but not limited to, terms and conditions, and any other services selected, if any. The terms and conditions of each Member are provided in Appendices A through I but, depending on the Member, may be subject to change or negotiation prior to execution of the Implementing Agreements. Illinois law and rule shall govern any contract that results from this procurement, except as otherwise provided in any Implementing Agreement. However, the terms and conditions in an Implementing Agreement shall only apply to such Implementing Agreement and shall not be applied to the Agreement.

A Member shall only be responsible for the obligations that arise pursuant to its respective Implementing Agreement. Members shall have no obligations or responsibilities related to an Implementing Agreement entered into by a different Member. The Contractor shall honor any Implementing Agreement entered into through and including the last day of the Agreement, unless otherwise specified in the Implementing Agreement.

The Consortium wishes to proceed with implementation of the Program, even if U.S. Treasury/Internal Revenue Service (“IRS”) final ABLE regulations are pending. Accordingly, in responding to this RFP, Respondents should anticipate complying with the proposed regulations published on July 20, 2015 with the clarifications described in IRS Notice 2015-81. Respondents should be aware that if the Agreement is entered into prior to the issuance of final U.S. Treasury/IRS regulations and, if the Program does not fully comply with all such regulations when issued, Program adjustments may be needed, and Contractor will work with the Consortium to bring the Program into compliance within the time frame permitted by the regulations. Additionally, if the final U.S. Treasury/IRS regulations authorize program elements that, in the sole judgment of the Consortium, are more beneficial to the Program or its Account Owners/Beneficiaries than in the Agreement, Program adjustments may be desired, and the Contractor will work with the Consortium to implement such elements within a reasonable amount of time.

### **III. Scope of Services**

The Consortium seeks Proposals to provide services for the implementation of a Program in each Member’s state, using common Program elements in order to achieve efficiencies and economies of scale. The Contractor will work with the Consortium to establish and maintain qualified Programs with common investment management, administrative services, customer service and outreach material support components. The accounts and assets will be the accounts and assets of the Member in which the account was opened. Accordingly, accounts and assets will need to be identified by the Member to which they

are associated and, at the termination of a Member's Implementing Agreement, such Member shall be removed from the Consortium.

The services that all Members have agreed to use are set forth in Section III.A of this RFP (collectively, the "Base Services"). Section III.B of this RFP lists those services of which a Member may opt-out (collectively, the "Opt-Out Services") (the Base Services and the Opt-Out Services shall collectively be "Services"). A Member may only opt out of the categories of Opt-Out Services (*i.e.*, a Member may opt out of all of Section III.B-1 and/or all of Section III.B-2). The Contractor shall provide the Services in compliance with all federal and state laws and regulations.

#### **A. Base Services**

The Contractor shall provide the Base Services set forth in this Section III.A, which includes III.A-1 through III.A-2, to the Consortium.

##### **A-1 Investment Management Services**

The Contractor will perform the following:

1. Investment Design and Options – Provide a suggested investment framework, associated investment options, and related services from one or more fund families offering an array of services designed to meet the diverse needs of the ABLE eligible population;
2. Investment Duties – Provide investment services, insights, and perspectives on investment due diligence, investment selection and replacement, and benchmarking among other investment duties;
3. Reporting to Members – Provide investment performance reports, compared to agreed-upon benchmarks as specified in the Agreement, to each Member on a periodic basis as will be specified in the Implementing Agreement(s);
4. Cooperation and Communication– Cooperate and communicate with the Consortium, individual Members, and any Member's consultant(s) in all evaluations of the investment options and in producing annual financial audits;
5. Regulatory Compliance and Reporting to Regulatory Agencies – Comply with all applicable state and federal laws and regulations including, but not limited to, those covering securities, banking, transfer agencies, consumer protection, tax, and the Social Security Administration ("SSA"); and
6. Aggregation – Aggregate the Members' investments, if doing so would achieve the highest possible economies of scale.

##### **A-2 Administrative Services**

The Contractor will perform the following:

1. General – Provide all recordkeeping, administrative, and fund management services needed for the effective operation of the Program in accordance with all applicable federal and state laws and regulations. Such services shall include, but are not limited to the following:
  - a. Developing forms and any operating documents;
  - b. Processing enrollments;
  - c. Maintaining Account Owner/Beneficiary, as outlined by the ABLE Act, accounts;
  - d. Receiving contributions;
  - e. Blocking receipt of excess contributions;
  - f. Disbursing funds;
  - g. Providing Account Owners with account information and transaction confirmations and account statements;
  - h. Exchanging files electronically with U.S. Treasury;
  - i. Complying with applicable SSA, banking, tax and security law requirements;
  - j. Filing required reports and forms with federal agencies;
  - k. Providing fraud prevention;
  - l. Providing web-based application services; and
  - m. Providing Members with requested reports.
2. Access – Provide Members access, including remote access, to all information and records for such Member's accounts;
3. Changes in Law – Monitor changes in federal and state laws and regulations that might impact the Program, advise the Consortium of any resulting needed changes, and work with the Consortium to implement any related necessary or desired changes;
4. Enrollment – Establish the enrollment process for eligible individuals in consultation with the Consortium. Both paper and online processes must be made available. The enrollment process must capture and have the Account Owner or authorized signatory certify the following, under penalty of perjury:

- a. Whether the Beneficiary is an eligible individual because he or she is:
  - i. Entitled to benefits based on blindness or disability under Title II of the Social Security Act;
  - ii. Entitled to benefits based on blindness or disability under Title XVI of the Social Security Act; or
  - iii. Meets the requirements of a disability certification under §529A(e)(1) and (2) of the ABLA Act.
- b. Any additional information, if any, necessary to establish that the Beneficiary is an eligible individual;
- c. The diagnosis code (as given in the instructions to IRS form 5498-QA) most applicable to the Beneficiary;
- d. If an individual other than the eligible individual is completing the enrollment process, the authority under which he or she is an authorized signatory;
- e. That there is no other ABLA account existing for the named Beneficiary; and
- f. Any other information required by law.

Unless prohibited by final IRS ABLA regulations, some of the Members desire the enrollment process to allow one master account tracked under the Social Security Number of the Beneficiary, with sub-accounts owned by the Beneficiary but with fiduciary responsibility of distinct authorized signatories. All sub-accounts would be subject to the single-account limitations of the ABLA Act, including, but not limited to, the annual and aggregate contribution limits, the investment direction limitation, and any federal reporting requirements. Other Members would like to adopt this structure only if and after the IRS has affirmatively indicated it will permit such a structure. Still other Members do not want to adopt this structure, even if allowed by the IRS;

5. Limitation on Investment Direction – Build in controls that will ensure that the limitation on investment direction to twice per year will be enforced;
6. Recertification and Contribution-Suspended Accounts – Develop, in consultation with the Consortium, procedures for recertification and prohibition of contributions to accounts whose Beneficiaries cease being eligible (contribution-suspended accounts);
7. Change of Beneficiary and Successor Beneficiary – Develop processes to allow the Beneficiary of an account to be changed as permitted by the ABLA Act and the implementing IRS regulations. If it is not prohibited by IRS regulations, the Contractor will develop processes to allow an advance directive to change the Beneficiary (*i.e.*, the Account Owner or authorized signatory may direct that a change of Beneficiary to a successor Beneficiary occur at a future time, such as the moment before the death of the Beneficiary);

8. Contributions – Provide lockbox services and accept contributions made in cash through all methods permitted by the IRS ABLE regulations (see proposed regulation §529A-2(g)), except credit cards. A single lockbox location is permissible. Contractor shall work with the Consortium to develop the following:
  - a. A method of permitting contributions via a debit card system or a similar option;
  - b. A minimum contribution level, preferably at \$15.00 or less;
  - c. Contribution restrictions that protect Account Owners from endangering federal and state benefits; and
  - d. A gifting platform via which Account Owners/Beneficiaries can provide a specified account identifier, such as a code, to a potential gift giver, which could be used by the gift giver to make a contribution.
9. Reports - Provide contribution, distribution, and account balance information on a monthly basis to the SSA in file formats specified by the SSA and report contribution information to the IRS on IRS form 5498-QA;
10. SSI Recipient Protections – When applicable, implement procedures to assist Account Owners/Beneficiaries who receive SSI benefits, if the Account Owner/Beneficiary so desires, from exceeding the maximum account balance that is disregarded for SSI benefit purposes, currently \$100,000;
11. Rollovers – Develop processes through which
  - a. An Account Owner or authorized signatory may roll over an account from a Member’s Program to a different state’s ABLE program either for the same Beneficiary or an allowable new Beneficiary and
  - b. The Program can receive rollovers from other states’ ABLE programs.
12. Distributions – Develop and implement processes through which distributions may be taken from accounts. Work with the Consortium to develop a method of permitting distributions via a debit card system or a similar option. Regardless of the manner in which the distribution is made, the Contractor shall require the requester to self-report whether the distribution is intended to be used for qualified or non-qualified expenses. In processing distributions, the Contractor must comply with IRS regulations for calculating principal and earnings. The Contractor shall permit an Account Owner to specify from which option a distribution will be taken, if an account has more than one investment option. In the absence of such a designation, Contractor shall take distributions on a pro-rata basis from all of the options;

13. Account Information and Transaction Confirmations –Provide the Account Owner, Beneficiaries, authorized signatories, and any authorized agents confirmations of the following: enrollment (including all data provided and the designations made), changes to account information, and transactions. Such confirmations may be sent via U.S. postal mail and/or provided via website access, as selected by the Account Owner or authorized agent;
14. Periodic Account Statements – Provide account statements to Account Owners, Beneficiaries, authorized signatories, and any authorized agents with authority to receive statements. Such account statements may be sent via U.S. postal mail and/or provided via website access, as selected by the Account Owner or the authorized agent;
15. “My Account” website - Develop and maintain a secure, robust website through which Account Owners/Beneficiaries, authorized signatories, and authorized agents can access account information, obtain investment performance information, conduct transactions, view completed and pending transactions, and make changes to account information and designations;
16. “My Account” records - Provide in the account records the date and time when the “My Account” website is accessed;
17. Deceased Beneficiaries – Determine if a Successor Beneficiary has been named and, if so, change the Beneficiary on the account as previously directed by the Account Owner, upon being notified of the death of a Beneficiary. If there is no Successor Beneficiary, the account shall become part of the estate of the Beneficiary and the Contractor will handle the account as directed by the legal representatives of the estate. As directed by each Member, the Contractor shall make repayments to Medicaid only upon receipt of a claim from a Medicaid agency;
18. Dormant Accounts – Comply with the unclaimed property laws of each Member and any other states whose laws are applicable to the ABLÉ accounts;
19. Compliance Notice –Provide the Consortium prompt written notice, should any federal or state compliance problems occur;
20. Reports to the Members – Provide each Member reports that contain the Reporting Requirements set forth in Appendix J. Such reports shall be required on a daily, monthly, quarterly, calendar year-end, fiscal year-end, and since program-inception basis, as specified in such Member’s Implementing Agreement. Additionally, Contractor shall provide ad-hoc reports, as requested by a Member;
21. Disclosure Statement – Prepare, in consultation with the Consortium, the official Disclosure Statement that will be included in all enrollment packets and communications. The Disclosure Statement shall contain all of the Program rules and material information necessary for a prospective Account Owner/Beneficiary to

make an informed decision regarding whether to invest in the Member's ABLÉ program, such as the impact of an ABLÉ account on federal and state means-tested benefits. The Disclosure Statement will have a similar template for all Members, but will require Member-specific customization related to state tax benefits, qualifications, etc. The Contractor shall prepare any required Supplements to the Disclosure Statement. Produce and distribute the Disclosure Statement and Supplements to the current Account Owner/Beneficiaries and/or authorized signatories, as required by law or an Implementing Agreement;

22. Fund Management – Provide all fund management services necessary to support the investments, including, but not limited to, custody, segregation of funds, cash management, other banking services, purchasing and sale of underlying investment products to effectuate the directions of Account Owners;
23. Accounting for Member Assets – Ensure that Member assets can be accounted for individually;
24. Conversion of Data – Provide each Member and/or its designee the Program data for such Member in the Member's requested format. The Contractor shall cooperate with each Members and/or its designee to convert such Member's data to a successor provider;
25. Status Calls – Participate in status conference calls with each Member at least once a month. The Consortium may request a joint status conference call with the Contractor in lieu of or in addition to individual calls with a Member. A Member may request additional calls as needed. In the event the Contractor is not the investment provider, the investment provider shall join the conference calls at least once a quarter;
26. State Administration – Work with the Consortium to develop options that would allow any Member to charge an additional asset-based fee. In the event there is an additional cost to providing multiple asset-based fees, there shall be a maximum of two (2) asset-based fees. Members may require the Contractor to charge different additional application fees and/or annual fees;
27. Fee Collection and Disbursement – a) Collect asset-based fees and/or specified dollar amount fees and b) distribute a portion of those fees to individual Members, and/or hold such fees for the benefit and use of the Member, as specified in an Implementing Agreement; and
28. Coordination with Members who Opt-Out of Customer Service –Develop an electronic work flow for transmitting customer service issues to and from the Member's Customer Service team, including sharing necessary and appropriate files to allow the Member to provide all customer service, for a Member that opts-out of Customer Service, Section III.B-1 of this RFP.

## **B. Opt-Out Services**

The Contractor shall provide the Opt-Out Services in this Section III.B, which includes III.B-1 through III.B-2, to all Members of the Consortium, except those Members that opt out of a particular Opt-Out Service.

### **B-1 Customer Service**

The Contractor will perform the following:

1. General Customer Service – Provide all customer services needed for the effective operation of the Program. Such services include, but are not limited to, answering in-bound calls; making out-bound calls as needed or requested; resolving items that are not in good order and other issues requiring interaction with the Account Owner/Beneficiary, authorized signatories, or authorized agents; and responding to emails and correspondence;
2. Toll-Free Phone Numbers – Provide a separate toll-free phone number for each Member with a greeting that identifies the specific Member state that has been called;
3. Phone Calls – Answer in-bound calls within the performance standards specified in the Agreement. Such performance standards will be developed in consultation with the Contractor. Escalate dissatisfied callers to supervisors as appropriate. Make out-bound calls as necessary to resolve account issues. Provide foreign language translation services;
4. General Knowledge and Responses –The Contractor’s customer service representatives shall engage in responsive conversation; scripts may not be used. Customer service representatives shall provide detailed information about the Program and about Member-specific ABLE-related benefits (with information provided by the Member). The Contractor shall provide general information about the impact of an ABLE account and any assets on federal means-tested benefits and on Member state means-tested benefits (with information provided by the Member). The Contractor’s customer service representatives shall provide, when appropriate, referrals to other federal, state, and non-profit resources for individuals with disabilities;
5. Broker-dealers – All broker-dealers who provide customer service are registered with the Financial Industry Regulatory Authority and have series six licenses or better;
6. Records for Calls – Summarize all account-specific calls in the account record of the subject account. Record all calls, in-bound and out-bound; retain such recordings for the period set forth in the applicable Implementing Agreement; and make such recordings available for review by the applicable Member through remote access;

7. Availability – Be available from 8:00 a.m. to 5:00 p.m., in each Member’s time zone, Monday through Friday, except for Federal holidays and periods of pre-scheduled system maintenance. Provide a back-up system to take calls in the event the primary call center is unable to take calls;
8. Correspondence – Respond to all correspondence within the performance standards specified in the Agreement. Such performance standards will be developed in consultation with the Vendor. Escalate dissatisfied correspondents to supervisors as appropriate. Retain correspondence and Contractor’s responses thereto for the period set forth in the applicable Implementing Agreement. For account-specific correspondence, electronically include the communication in the account record of the subject account. Make correspondence and the responses thereto available for review by the applicable Member through remote access;
9. Account Transactions – Implement account changes and carry out transactions requested by phone from Account Owners, Beneficiaries, authorized signatories, and any authorized agents. Changes and transactions that can be done by phone will be limited to those specified in the program disclosure, which shall, at a minimum, include changes in address, changes in investment options, and withdrawals. Additionally, customer service representatives shall assist prospective Account Owners in completing online enrollment;
10. Fulfillment – Produce and mail, upon request:
  - a. The enrollment kit, which shall include, but not be limited to, a description of the Program, enrollment brochure, and enrollment forms, to prospects who call, email or send a written request for such materials; and
  - b. Brochures about the Program.
11. Reports – Provide reports on all aspects of customer service performance both in the aggregate for the Consortium and by individual Member. Reports shall contain the information specified in the applicable Implementing Agreement.

## **B-2 Outreach Material Support**

The Contractor will perform the following:

1. Program Brand – Create a Program Brand with logo that can be customized for each Member;
2. Front-End Website – Develop and maintain the common content and design for a Program website for each Member. Provide each Member a dedicated URL with customized branding and Member-specific information. At a minimum, the websites should have sections for the following topics: ABLE details (general information about ABLE), investment options, ABLE and Program FAQs, resources (links to various resources). The Contractor will provide each Member

with the ability to make changes to their customized website (collectively, the “Front-End Website”);

3. Enrollment Kit – Create an enrollment kit that has a similar template for all Members, but will have Member-specific customization related to state tax benefits, qualifications, etc. The enrollment kit shall consist of easily understood descriptions of all Program elements, factors to consider when opening an account, a disclosure statement, and enrollment forms;
4. Brochure – Create a brochure that contains a broad overview of the Program services, designed to encourage enrollment. The brochure will have a similar template for all Members but will have Member-specific customization related to state tax benefits, qualifications, etc.; and
5. Webinar – Create a template webinar and a PowerPoint presentation that provide general information regarding the Program as well as slides that can be customized by Members.

#### **IV. Cost Proposal**

Respondent shall complete the Cost Proposal Spreadsheet, attached as Appendix K. The instructions for the Cost Proposal Spreadsheet are as follows:

1. For each investment option you are proposing, complete a separate table #1 Investment Options, indicating whether you will charge a) only basis points (on the total of all assets held in all Members’ Programs combined) or b) a combination of basis points and a specified dollar amount. Provide your price at various total asset break-points.
2. In table #2 Service/Transaction Fees, provide the price for services that are optional for Account Owners.
3. Would you discount any fees charged to accounts that elect to receive e-delivery rather than mailings? If so, provide the amount by which the pricing would be reduced in table #3 E-Delivery. If no discount would be provided, then mark the table “N/A.”
4. In table #4 Customer Service, list the amount by which the pricing would be reduced for a Member that elects to provide customer service in-house. “Customer Service” is defined as Section III.B-1 of this RFP.
5. In table #5 Outreach Material Support, list the amount by which the pricing would be reduced for a Member that elects to provide its own Outreach Material Support. “Outreach Material Support” is defined as Section III.B-2 of this RFP.

6. In table #6 Master/Sub-Accounts, unless prohibited by final IRS ABLE regulations, list the pricing for providing a master/sub-account structure for those Members that would choose to offer it. Indicate the additional fee(s) that you would charge for this option, if any. If you will not provide this structure or if providing it would not change the pricing, then mark the table “N/A.”

## **V. Proposal**

### **A. Proposal Format**

The Respondent’s Proposal shall contain the following:

1. Cover page – The cover page shall provide the name, physical address, e-mail address, and telephone number of the person(s) available for contact regarding the Proposal. Such person(s) must be authorized to make representations on behalf of the Respondent.
2. Table of Contents – Please list the Sections in your Proposal and their corresponding page numbers.
3. Section I – In Section I, Respondent shall provide a brief two-page narrative, describing the general conceptual approach Respondent would take to provide the Services and any other information Respondent believes is relevant. Emphasis should be on clarity, brevity and completeness of response.
4. Section II: Answers to Proposal Questions – Section II shall contain Respondent’s answers to the questions presented in Section V.B of this RFP. Respondent must respond to all of the questions. Respondent’s answers must include the headings (e.g. “Background”) and be numbered in the order provided in Section V.B.
5. Section III: Subcontractors – Section III shall provide a list of the subcontractor(s) Respondent will use to provide the Services, if any, and the general type of work to be performed by each subcontractor.
6. Section IV: State Certifications and Disclosures - Respondent and any subcontractor(s) must submit the following three (3) fully executed documents: Illinois State Treasurer Certifications, Disclosures Financial Interest and Potential Conflicts of Interest (Disclosure Form A), and the Disclosures Other Contract and Procurement Related Information (Disclosure Form B).
7. Section V: Cost Proposal – Section V shall provide Respondent’s completed Cost Proposal Spreadsheet (“Cost Proposal”) in a separately sealed envelope and on a separate electronic storage device. Respondent must use the Cost Proposal Spreadsheet provided in Appendix K.

Proposals must be submitted in a sealed envelope or package bearing the title “ABLE Services Proposal 370-200-16-003 for the Office of the Illinois State Treasurer” and the Respondent’s name and address. The package must include one (1) original and four (4) copies of the Proposal. A separate envelope must contain one (1) original and four (4) copies of the Cost Proposal. In addition, please provide ten (10) electronic copies of the Proposal and ten (10) separate electronic copies of the Cost Proposal. Each electronic Proposal copy and each electronic Cost Proposal copy shall be on a separate electronic storage device, such as a CD or thumb drive.

## **B. Questions to be Addressed in the Proposal**

For responses in this section "you" and "your" mean all of the following as applicable to each question: 1) the Respondent and 2) any entity with which the Respondent is partnering or subcontracting, to provide any of the Services.

### OVERVIEW

#### General

1. Provide a brief overview of your organization. Describe your organization’s corporate structure, including holding companies, parents, and corporate affiliates.
2. Disclose your organization’s primary location as well as the location of any facility located outside of the primary location that will be used to provide the Services.
3. Provide an organization chart and include the names, positions, and a brief biography of all management staff who would be involved in providing Services to the Consortium.
4. For the subcontractors listed in Section III of your Proposal, explain why the subcontractor’s functions cannot be performed by your organization.
5. Are there any investigations, administrative actions and/or inquiries by any regulatory agency or self-regulatory organization including, but not limited to, the Securities and Exchange Commission, Department of Justice, Department of Labor, Federal Reserve, Financial Industry Regulatory Authority, etc., in which your firm, its officers, or principals have been involved in from January 1, 2011 to present? If so, provide a detailed explanation.
6. Has your organization been a party to a lawsuit from the January 1, 2011 to present? If so, please provide a detailed explanation.
7. Has your organization been a party in the past five (5) years to any data breach or loss of personal, financial or other data considered private or confidential? If so, provide details and what steps were taken to address the issue both in the short term related to the specific breach/loss and also in the longer term to prevent such a breach/loss from happening again.

8. Are you considering a merger with or acquisition of another entity? If so, please describe the effect that this will have on your ability to provide the requested services.
9. Provide a statement certifying that none of the Services would be performed outside of the United States. If work must be performed outside of the United States, provide a detailed explanation of why this is required.
10. Provide contact information for five client references. References must be entities to which Respondent has provided services most similar to the Services.
11. Describe how you will ensure that, as applicable, all access to services and materials will be compliant with the Americans with Disabilities Act (“ADA”), Web Content Accessibility Guidelines (“WCAG”) 2.0 (Level AA), and Section 508 of the Rehabilitation Act, use person-first language, and be easily understandable by individuals who are not sophisticated investors.
12. Provide a description of the various types of insurance coverage (carriers, risk coverage, levels, limits, deductibles, expiration dates, etc.) Respondent has in place to protect its clients.
13. Describe your disaster recovery plan, including back-up procedures, and alternate operation facilities.
14. Describe your fraud protection practices.
15. Describe how you will work with the Members to achieve a higher economy through multi-state collaboration.
16. Describe any practices, products, or items that are not mentioned in this RFP that you feel would benefit the Consortium and how they would benefit the Consortium.
17. Identify any Service requested in this RFP that you believe will make the cost of the Program more expensive or less attractive to potential Account Owners/Beneficiaries than it would be without such Service. Explain why it would add to the cost or detract from the attractiveness. Suggest a less expensive/more attractive alternative, if possible.
18. Does procuring as a Consortium make the cost of the Program more expensive or less attractive to potential Account Owners/Beneficiaries than if the Members were to procure separate Programs?
19. Do you currently have or have you had in the past five (5) years a contract that contains services similar to the Services sought in this RFP with similar size, scope, and complexity? For each contract, provide the following information:

- a. The entity for which you are providing or have provided services and a brief description of such entity;
  - b. The contract term;
  - c. A description of the services you provide or provided under the contract.
  - d. For contracts for administrative services, provide the following:
    - i. total number of accounts for which you provided services pursuant to the contract as of December 31, 2015, if services continue to be provided; and
    - ii. Whether any involved a conversion of data, images, and/or information to or from you to another record-keeper.
  - e. For contracts for investment manager services, provide the following:
    - i. The total assets under management pursuant to the contract at the time the investment manager ceased providing services or as of December 31, 2015, if the investment manager continues to provide services; and
    - ii. Whether any involved a conversion of assets from the investment manager you are proposing to another investment manager.
  - f. For contracts for customer service, provide the following:
    - i. The total number of accounts or customers for which you provided customer service at the time you ceased providing services or as of December 31, 2015, if customer service is no longer provided;
    - ii. Performance statistics for phone calls, including the average daily number of calls received, abandoned call rate, time to answer rate, length of call, and after call time for the most recent year in which you provided service; and
    - iii. Performance statistics for correspondence, including the average daily amount of correspondence received; the amount of correspondence answered: the same day received, within the next business day, within the next two (2) business days, within the next three (3) business days, and after three (3) business days.
20. Please identify any item listed in Section III of this RFP that you are unwilling or unable to perform and explain why. Confirm that you will perform all other items listed in Section III of this RFP.

## INVESTMENT MANAGEMENT

### Investment Background and Experience

21. Provide the total assets under management, as of December 31, 2015, for each investment management firm you are proposing. Also, include the assets under management for each fund vehicle you are proposing.
22. Describe your decision-making process in choosing the investment manager(s), underlying investments and investment options included in your Proposal. Include information regarding the team and personnel involved in creating your Proposal.
23. If applicable, provide the current short-term and long-term credit rating for each investment management company for each fund or fund family you are proposing to use.

### Investment Design and Options

24. How would you structure the investment program?
25. Would you offer target date funds, target risk funds, individual portfolios, or a combination of all three?
26. Would you be able to offer a Federal Deposit Insurance Corporation (“FDIC”) insured option?
27. Are you proposing an open or closed architecture platform? Are you proposing proprietary funds or third party investment options?
28. What is your position on active v. passive management?
29. Describe in detail the number and type of investment options that you are proposing and state why you are proposing the selected number and type of investment options. Do your options include a disbursement-type option? If not, why not? Would you offer such an option at a later date?
30. Describe your review process to make initial recommendations on the plan’s investment options, portfolio structure, optimization techniques, including asset classes, completion strategies, and the composition of target-date and target risk profile glide paths.
31. Do your investment options include an investment option that allows for frequent disbursements? If not, why not? Would you anticipate offering such an option at a later date?
32. How would you provide cost analysis of the Program’s fees and compare them to industry benchmarks?

### Investment Duties

33. What is your experience and expertise in creating a program investment policy statement, creating investment review processes, and incorporating due diligence best practices?
34. If Respondent intends to offer non-proprietary target date and/or target risk funds, describe your firm's ability to conduct an asset allocation study that may or may not include a quantitative asset allocation analysis.
35. Describe your process for providing detailed benchmarking analysis on plan performance attribution and individual fund performance attribution, including comparisons with industry benchmarks and third-party rating organizations.
36. Describe the process you use to evaluate existing investment options, underlying funds, and investment manager lineup on an on-going basis.
37. When applicable, describe your process for selecting and providing new investment options, underlying funds, and investment manager recommendations.
38. Describe how you would provide constant monitoring and timely review and analysis of key events that could potentially affect investment options and/or individual funds, including significant market events, mergers and acquisitions, public offerings, changes in fund senior management, and new and proposed federal and state legislation and regulations.

#### Reporting

39. What performance reports would you provide the Members and with what frequency? Provide a sample risk and performance report.
40. Describe how you would ensure standardization of your performance reporting across the investment options and individual funds.
41. Detail your proposed reporting process on plan performance and individual fund performance, including the tracking, analysis, and reporting of investment options and individual funds.
42. How and with what frequency would you evaluate the investment options in the Program, explore alternatives, and make any recommendations for change?
43. Provide a written sample of an investment performance report work product.

#### Aggregation

44. Will aggregation of the investments for the Consortium achieve the highest possible economies of scale? If not, what alternative(s) would you suggest?

#### Cooperation and Communication

45. Describe your experience in coordinating with clients and their investment staff to gain insight and knowledge regarding their investment plans, statutory authority, and related portfolios.
46. How would you communicate with the Consortium, individual Members, and any Member's consultant in evaluations of the investment options and in communicating annual performance or required annual audits?

## ADMINISTRATIVE SERVICES

### Administrative Background and Experience

47. Provide a copy of your last SSAE16 in electronic format and list any substantive issues in the SSAE16 as well as any steps taken to address said issues.
48. Describe the record-keeping systems, database software and system security that would be used for the Program.
49. What type of assessments do you perform to ensure that your IT infrastructure remains secure? How often are they performed?
50. How would you provide each Member with electronic access to all of its account information? Would that access be in real time? If not, what would be the delay?

### Reporting

51. Would you provide all of the reports identified in Appendix J of this RFP? If not, please identify what reports you would not provide and explain why.
52. Is there any additional information you would provide that is not requested in Appendix J of this RFP? If so, what additional information would you provide?
53. Would you provide ad-hoc reports, as requested? What would be your procedure for requesting and responding to such a request? How quickly would you be able to respond?

### Enrollment

54. Describe the enrollment processes (both paper and online) you would offer. Include your processes for maximizing the accuracy of the information entered into your databases.
55. When the Program is launched, unless prohibited by law, could Members allow their respective enrollment process to offer a master account with sub-accounts, controlled by separate authorized signatories? If so, please describe how you would accomplish this, and how you would ensure that all of the account restrictions are enforced. If not, would you be able to offer such an optional structure subsequent to the Program's launch, and how long after launch would

you anticipate being able to offer this structure include such cost in the Cost Proposal.

56. When the Program is launched, would your enrollment process allow an Account Owner to designate authorized agents and choose among several different levels of account authority? If you would not be able to offer such functionality at the time of launch, would you be able to offer it at a later date, and how long after launch would you be able to offer this functionality?

#### Recertification and contribution-suspended accounts

57. Provide your recommendation for the recertification process. How would you notify Account Owners of their obligation to report changes in the Beneficiary's eligibility, and how frequently would you provide such notice?
58. Describe your process for identifying contribution-suspended accounts and ensuring that contributions to such accounts are not accepted. Describe your process for removing an account from a contribution-suspended status, including the information that the Account Owner must provide in order to return the account to active status.

#### Change of Beneficiary and Successor Beneficiary

59. Describe how an authorized signatory could change the Beneficiary, including the information necessary to establish that the purported new Beneficiary is both an eligible individual and a sibling of the current Beneficiary.
60. Describe how an Account Owner or authorized signatory would change the Beneficiary through an advance directive that takes effect at the moment before the Beneficiary's death. If you would not be able to provide this functionality at the time of Program launch, would you be able to provide it at a later date, and how long after launch would you be able to offer this functionality?

#### Contributions

61. Describe the permitted contribution methods you propose.
62. If you permit contributions by debit card, describe your Payment Card Industry Data Security Standard ("PCI DSS") compliance status and program. Do you have current PCI DSS certification? If yes, what certification level do you have?
63. Provide the minimum initial and subsequent contribution amounts that you would require and describe any hold periods you would impose on withdrawing new contributions.
64. Describe how you would handle failed contributions, such as checks returned for insufficient funds or failed ACH contributions. Would you charge the Account Owner for such failed contributions?

65. Describe the minimum balance, if any, you would require in a cash account or money market account before an Account Owner/Beneficiary could invest in a non-cash account.
66. Describe how and when you would transfer contributions to the investment manager.
67. Describe how you would ensure that contributions in excess of the annual limit are not accepted, and, if erroneously accepted, how you would obtain the contributor's Tax Identification Number. Describe how you would return the excess contribution and any investment gains therefrom.
68. Upon Program launch, would you have procedures through which an Account Owner can restrict who may contribute to his or her account? If so, please describe those procedures. If not, would you be able to offer such procedures at a later date, and how long after launch would you be able to offer them?
69. Upon Program launch, would you offer a gifting platform? If so, please describe how it would function. If not, would you be able to offer such a platform at a later date, and how long after launch would you be able to offer it?

#### SSI Recipient Protections

70. To assist an Account Owner/Beneficiary in preserving their full SSI benefits, how would you limit an Account Owner's/Beneficiary's ability to exceed the threshold balance for federal benefits?

#### Rollovers

71. Describe how you would handle both incoming and outgoing rollovers, including direct and indirect rollovers.

#### Distributions

72. Describe how you would receive and process distribution requests. Provide all of the methods through which a distribution request can be made and the methods of payment. For each method provided, approximately how much time would be needed take until the payment is issued. What identity verification process and/or fraud protection system would you use to ensure that the requester is the Account Owner, the authorized signatory, or an authorized agent with withdrawal authority?
73. Upon Program launch, would you offer a distribution process that allows a withdrawal to be made through a debit card? If not, would you be able to offer it at a later date, and how long after launch would you be able to offer this distribution option? If you would permit distributions to be made by debit card, describe your Payment Card Industry Data Security Standard ("PCI DSS") compliance status and program. Do you have current PCI DSS certification? If yes, what level certification do you have?

74. For each withdrawal method you propose, describe how you would direct the requester to specify whether the distribution will be used for qualified or non-qualified purposes.
75. If an account has more than one investment option, would the Account Owner be able to specify from which option the distribution will be taken and, in the absence of such a designation, take the distribution on a pro-rata basis from all of the options?
76. How would you calculate principal and earnings for the purposes of filing IRS Form 1099-QA?

#### Account Information and Transaction Confirmations and Statements

77. Describe your process for sending confirmations by mail and by electronic means; include the length of time after the event or transaction in which the confirmation would be made.
  - a. What information would be included in the confirmation; specifically, if the confirmation is of a change in account information or designation would both the old information and the new information be included?
78. Describe what types of transactions would trigger confirmations.
79. Describe how returned mail would be handled.
80. Describe the information that would be provided in account statements.
81. How frequently would you send account statements? If quarterly or less than quarterly, could they be provided at a higher frequency for an additional fee?

#### Dormant Accounts

82. Describe your process for handling dormant accounts.
83. Describe how you would ensure that each time an account owner, authorized signatory, or authorized agent accesses the “My Account” portion of the website, the access, including the access date, is recorded in the account records.

#### “My Account” Website

84. Describe in detail the account information and transaction history that would be accessible on the “My Account” website.
85. Identify the transactions an Account Owner/Beneficiary, authorized signatory, or authorized agent would be able to make on the “My Account” website.
86. Would your “My Account” website have a mobile app or be mobile optimized?
87. In what formats could your “My Account” website export data?

88. What online security protocols would you use to protect an Account Owner or authorized individual when they access the “My Account” portion of the website?

#### Fee Collection and Disbursement

89. Describe your process for collecting asset-based fees as well as your process for collecting specified dollar account fees, such as an annual account maintenance fee, transaction fees, or fees for optional services.
90. Describe how you would create the cost structure to allow for different states to charge different asset-based fees and/or different annual/enrollment fees. Could a Member buy down, for its residents, a fee that would be charged by the Contractor, such as an annual or enrollment fee? If so, how would that be structured procedurally?

#### Deceased Beneficiaries

91. Describe how you would handle accounts when notified of the death of a Beneficiary. Include whether you would allow for the designation of a successor Beneficiary.
92. Describe how you would respond to claims filed by a state Medicaid agency for repayment of Medicaid services.

#### Disclosure Statements

93. Describe how you would prepare the Disclosure Statement. Include the name and qualifications of your staff and any outside experts you would engage in the drafting of the Disclosure Statement.

#### Annual Audits

94. For the Members that would require you to retain an outside auditing firm, how would you select an auditing firm?

#### Fund Management

95. Describe the fund management services you will provide.
96. Describe how you would hold the total assets for the Consortium to achieve the greatest economies of scale, while still being able to account for each Member’s assets.
97. Would you strike a daily NAV for each investment option with a NAV? If not, describe your process for obtaining a daily NAV for each investment option.

#### Conversion of Data

98. How would you convert data, information, and images to a successor vendor?

#### Coordination with Members who Opt-out of Customer Service

99. For a Member who opts-out of Customer Service, Section III.B-1 of this RFP, describe your electronic work flow for transmitting customer service issues to and

from the Member's Customer Service team, including sharing necessary and appropriate files to allow the Member to perform all required customer services.

## CUSTOMER SERVICE

### General Customer Service

100. Is the customer service you provide under other contracts evaluated or audited by any third-parties? If permissible, provide the last three audits or evaluations.

### Phone Calls

101. Describe your system for answering in-bound calls, specifying, at a minimum, how you would provide call routing and tracking, live representative selection and functionality, the ability to leave voicemails for return calls and the scenarios in which voice mails would be left.
102. How would you verify the identity of a caller who seeks account specific information or requests transactions?
103. Explain how you would provide foreign language translation services.
104. Describe in detail your methodology for handling peak volume periods. What is the maximum hold time that a caller could be on hold or in a queue? Do you have rollover capability (to another call center)?
105. If you are a broker dealer, would customer service representatives answering the phones be registered with the Financial Industry Regulatory Authority and have series six licenses or better?
106. Describe the training that would be provided to call center representatives before they are allowed to handle incoming calls, including, but not limited to, the average number of hours spent in training, what type of training materials and methods would be used, and how call monitoring by trainer/supervisor will be provided.
107. What call center performance standards do you propose? Include abandonment rate, wait times, length of call, after call documentation, and any other items you customarily track.
108. What would be your criteria and protocol for escalating dissatisfied callers to supervisors or the applicable Member?
109. How would customer services representatives make outbound calls to resolve account issues?
110. Do your customer service representatives typically follow prescribed scripts? How would you ensure that customer service representatives do not use scripts in

taking or making Program phone calls but, instead, engage in responsive conversation?

111. In your opinion, when would it be appropriate to refer a caller to other federal, state, and non-profit resources for individuals with disabilities for specific advice concerning their benefits?
112. Describe the system that would be used to summarize all account specific calls in the subject account record.
113. Describe your methodology for recording all calls, in-bound and out-bound; retaining such recordings for the period set forth in the applicable Implementing Agreement; and making such recordings available for review by the applicable Member through remote access.
114. Specify the account changes and transactions requested by phone from authorized individuals that customer services representatives would be able to make and describe the systems through which they will make such changes and transactions.
115. Describe how customer service representatives would assist prospective Account Owners in completing online enrollment.

#### Correspondence

116. Describe your process for answering correspondence.
117. What performance standards do you propose regarding correspondence response times?
118. What is your procedure for escalating dissatisfied correspondents to supervisors or affected Member as appropriate?
119. Describe your methodology for retaining responses to account specific correspondence for the period set forth in the applicable Implementing Agreement, include how the correspondence and any responses thereto would be associated with the account record of the subject account. Also describe how you would make such correspondence and the responses thereto available for review by the applicable Member through remote access.

#### OUTREACH MATERIAL SUPPORT

##### Outreach Background and General Experience

120. Are you currently under contract to provide services for another ABLE program? If so, how would you differentiate between marketing materials for the Consortium versus the other ABLE program?
121. Do you have experience working with any organization that represents persons with disabilities?

122. Discuss your experience, if any, in providing outreach materials in a regulated financial business and provide work samples of such materials.
123. Discuss your experience, if any, in providing outreach and educational materials to persons with disabilities and provide work samples of such materials.

#### Branding

124. Discuss your experience in creating branding, logos and tag lines for similar governmental or non-profit organizations.
125. Describe how you would customize branding for each Member.

#### Front-End Website

126. Could the Program websites seamlessly interface with a secure recordkeeping system to provide Account Owners with personal account access?
127. Confirm how Members would update the shared information and the Member-specific information on their respective customized websites.
128. What backup systems do you have in place to ensure minimal service disruptions?

#### Additional Services

129. Please provide any ideas you may have to creatively provide outreach to eligible individuals with disabilities.

### DIVERSITY

#### Contractor

130. Please describe the Respondent's prior experience and future capability to engage and evaluate investment funds that are female, minority, persons with disabilities, or veteran owned or managed. For purposes of this RFP, "female, minority, persons with disabilities, or veteran owned or managed" shall mean being owned or managed by 51% or more of a combination of female, minority, persons with disabilities, or military veteran.
131. Please provide the number and percentage of Respondent's senior leaders (e.g. partner, president, COO, or managing director) who are female, minority, persons with disabilities, or military veterans. Please cite with supporting data.
132. Please provide the number and percentage of Respondent's professional investment staff who are female, minority, persons with disabilities, or military veterans. Please cite with supporting data.
133. Is the Respondent or its affiliates female, minority, persons with disabilities, or veteran owned or managed? Please cite with supporting data.

Subcontractor(s)

134. Using the definition provided above, what is the percentage of Respondent’s intended use of subcontractors for this project, if any, that are female, minority, persons with disabilities, or veteran owned or managed? Please cite with supporting data

**VI. RFP Schedule and Process**

This Section provides the schedule and process for this RFP.

**A. RFP Schedule**

The following is the schedule for this RFP:

<b>Date</b>	<b>Event</b>
June 8, 2016	RFP published on the Treasurer’s website.
June 20 , 2016	Notice of intent to participate in the Bidder’s Conference due by 2 pm CT.
June 21, 2016	Mandatory Bidder’s Conference at 2 pm CT. (participation by phone is acceptable)
June 27, 2016	All Respondent questions due by 2 pm CT.
July 6, 2016	Responses to all questions posted on the Treasurer’s website by 4 pm CT.
August 1, 2016	Proposals due at 2 pm CT.
Week of August 8, 2016	Interviews, if any, with final candidates.
August 15, 2016	If applicable, best and final offer due by 2 pm CT.
August 17, 2016	Notification of award and begin negotiation of Agreement.

These dates are subject to change at the Treasurer’s discretion.

**B. Contact Information**

The Treasurer’s Chief Procurement Officer (“CPO”) is the sole point of contact concerning this RFP.

Respondents should submit questions about the intent or content of this RFP and request clarification of any and all procedures used for this procurement prior to the submission of a Proposal. Respondents must submit their questions in writing by e-mail to the CPO at [junderwood@illinoistreasurer.gov](mailto:junderwood@illinoistreasurer.gov) by 2pm CT on June 27, 2016.

**C. Bidder’s Conference**

If a Respondent intends to participate in the Bidder’s Conference, Respondent must e-mail the CPO notice of intent to participate by 2 pm CT on June 20, 2016. Participation by

phone is acceptable. The Bidder's Conference shall be on June 21, 2016 at 2 pm CT at the following address:

100 W. Randolph St., Suite 15-600  
Chicago, IL 60601

**D. Proposal Submission**

All Proposals must be submitted by mail or messenger to the following address, no later than 2:00 p.m. CT on August 1, 2016:

Mr. Jim Underwood  
Chief Procurement Officer  
Office of the Illinois State Treasurer  
400 W. Monroe Street, Suite 401  
Springfield, IL 62704  
Phone: 217.782.1708

**E RFP Process**

1. Internet/E-mail Communications

The Treasurer may also communicate with Respondents via e-mail. Each Respondent should provide an e-mail address with its response for ease of communication throughout this RFP process.

2. Verbal Communications

Any verbal communication from the Treasurer, its contractors, or any other Member concerning this RFP is not binding on the Treasurer, and shall in no way alter a specification, term or condition of this RFP.

3. Amendments

If it is necessary to amend this RFP, the Treasurer will post any amendments on its website at [www.illinoistreasurer.gov](http://www.illinoistreasurer.gov).

4. Respondent's Costs

The cost of developing a Proposal is each Respondent's responsibility and shall not be charged to the Treasurer or any other Member, individually or collectively.

5. Withdrawal of Proposal

Respondent may withdraw its Proposal at any time prior to the deadline for receipt of Proposals. The Respondent must submit a written withdrawal request, addressed to the CPO and signed by the Respondent's duly authorized representative.

## 6. Modification of Proposal

A Respondent may submit an amended Proposal before the deadline for receipt of Proposals. Such amended Proposal must be a complete replacement for the previously submitted Proposal and must be clearly identified as such in the transmittal letter to the CPO.

## 7. Proposal is a firm offer

A Proposal submitted in response to this RFP is a firm and binding offer, valid for 180 days after the due date for Proposals or the due date for the receipt of a best and final offer, whichever falls later.

## 8. Proposal is State Property

On the Proposal due date, all Proposals and related material submitted in response to this RFP become the property of the State of Illinois.

## 9. CPO May Cancel RFP

If the CPO determines that it is in the Treasurer's best interest, he reserves the right to do any of the following: a) cancel this RFP; b) modify this RFP in writing as needed; or c) reject any or all Proposals received in response to this RFP.

## 10. Additional Information

The Treasurer reserves the right to request additional information and to request representatives of Respondent to meet with the Consortium to discuss its Proposal.

## **VII. Evaluation Process and Criteria**

This Section explains how the Evaluation Team will evaluate the Proposals.

### **A. Mandatory Requirements**

1. The Respondents must answer all of the questions listed in Section V.B of this RFP.
2. Proposals must set forth the manner in which the Respondent will satisfy each requirement.
3. The Respondent must submit the name, physical address, e-mail address, and telephone number of an individual with authority to answer questions or clarify their responses.

4. The Respondent must agree to submit reports and other supporting materials as requested, in a timely manner.
5. Respondents must offer investment management, administrative services, customer service, and outreach material support in their respective Proposals.

**B. Scoring**

The following table shows the maximum number of points that can be awarded for each evaluation factor that will be used in reviewing the Proposals:

<b>Evaluation Factor</b>	<b>Maximum Number of Points Possible</b>
Background & Experience	250
Quality of Services	250
Reporting Abilities	100
Cost Proposal	350
Diversity	50
<b>TOTAL</b>	1000

**C. Evaluation Factors**

1. Background and Experience

Scoring will be based on Respondent’s demonstrated ability to provide quality investment, administrative, marketing and customer service to the Consortium. The breadth and depth of similar engagements will be considered. The evaluation will also include reference checks regarding the Respondent's work for previous clients receiving services similar to those in this RFP.

2. Quality of Services

Scoring will be based on Respondent’s answers to the questions in Section V.B of this RFP. The thoroughness and clarity of the Proposal, the perceived validity of the Proposal, and the talent and experience of assigned personnel will be considered.

3. Reporting Abilities

Based on the answers to the questions in Section V.B of this RFP, the Evaluation Team will assess the Respondent's ability to provide timely and accurate reports as required under federal and state law, and detailed in this RFP as well as the quality of such reports.

#### 4. Cost Proposal

Respondent's Cost Proposal score will be scored based on an evaluation of its cost-effectiveness.

#### 5. Diversity Score

Respondent's diversity score will be scored based on the answers the Respondent provides, if any, to the diversity questions in Section V.B of this RFP. The Evaluation Team shall award a higher diversity score to Respondents that are female, minority, person with disabilities, or veteran owned or managed. Having a higher percentage of subcontractors that are female, minority, person with disabilities, or veteran owned or managed shall also result in higher scores.

### **D. Evaluation Process**

All Responses will be reviewed for compliance with the RFP requirements and specifications. Proposals deemed non-responsive will be eliminated from further consideration. The Chief Procurement Officer may contact the Respondent for clarification of the Proposal, and the Evaluation Team may use other sources of publically available information to perform its evaluation. Finally, the Evaluation Team will make a recommendation regarding the final Respondent.

## **VIII. Contract Terms and Conditions**

The Contractor shall agree to each contractual provision set forth in this Section. The Contractor should anticipate that each Implementing Agreement may contain similar provisions.

### **A. Contractual Responsibility**

Contractor will be contractually responsible for all services provided. By responding to the RFP, Contractor expressly agrees to the contractual requirements herein. Contractor shall at all times provide services in a commercially reasonable manner.

### **B. Governing Law**

The Agreement shall be governed in all respects by the laws of the State of Illinois without regard to conflicts of law principles. Any Implementing Agreement shall be governed in all respects by the laws of the State of Illinois without regard to conflicts of law principles, unless otherwise provided in an Implementing Agreement. Any action by the Contractor against the Treasurer can only be brought in the Illinois Court of Claims. In its

Implementing Agreement, a Member may require the Contractor to bring any action against such Member in the Member's state courts.

### **C. Term of Agreement**

The initial term of the Agreement will be five (5) years, unless terminated in accordance with the terms of the Agreement. The Treasurer may, with the consent of the Contractor, elect to extend the Agreement for additional periods, not to exceed a total term of ten (10) years, including the initial five (5) years.

### **D. Implementing Agreements**

Only Members may enter into Implementing Agreements with the Contractor. A Member shall use its own individual Implementing Agreement template, which shall contain details specific to the Member, including, but not limited to, distribution of fees, the terms and conditions specific to the Member, and the optional Services selected, if any. However, the terms and conditions in the Implementing Agreement shall only apply to such Implementing Agreement and shall not supersede the Agreement.

A Member shall only be responsible for the payments or other applicable obligations that arise pursuant to its respective Implementing Agreement. Members shall have no obligations or responsibilities related to an Implementing Agreement entered into by a different Member. The Contractor shall honor any Implementing Agreement entered into through and including the last day of the Agreement.

### **E. Termination**

Before terminating the Agreement, the Treasurer will give the Consortium notice of such intent and give the Consortium an opportunity to name a Member to whom the Treasurer will assign the Agreement, pursuant to the Section governing assignment.

#### 1. Termination without cause

The Treasurer may elect to terminate the Agreement at any time upon ninety (90) calendar days' notice.

#### 2. Termination for Cause:

Notwithstanding any language to the contrary, the Agreement may be terminated by the Treasurer or CPO under any of the following circumstances:

- a. Contractor fails to furnish satisfactory performance within the time specified;
- b. Contractor fails to perform any of the provisions of the Agreement or so fails to make progress so as to endanger the performance of the Agreement in accordance with its terms;

- c. Any services provided under the Agreement are rejected and are not promptly corrected by the Contractor or repeatedly rejected even though Contractor offers to correct services promptly;
- d. There is sufficient evidence to show that fraud, collusion, conspiracy, or other unlawful means were used to obtain the Agreement;
- e. Contractor is guilty of misrepresentation in connection with another contract for services to the State;
- f. Contractor is adjudged bankrupt or enters into a general assignment for the benefit of its creditors or receivership due to insolvency;
- g. Change in federal or State law or rules, or the Contractor's or Treasurer's policies that would frustrate the purpose of the Agreement;
- h. Contractor disregards laws and ordinances, rules, or a Member's instructions or its respective agents, acts in violation of any provision of the Agreement, or acts in conflict of any statutory or constitutional provision of the State of Illinois or the United States; or
- i. Contractor commits any other breach of the Agreement or commits other unlawful acts.

Prior to terminating the Agreement for cause, the Treasurer shall issue a written warning that outlines the remedial action, developed with the Consortium, necessary to bring the Contractor into conformance with the Agreement. If such remedial action is not completed to the satisfaction of the Treasurer within thirty (30) business days, a second written warning may be issued. If satisfactory action is not taken by Contractor within five (5) business days of the date of the second written warning, the Agreement may be cancelled, and the Treasurer may recover any and all damages involved with the transition to a new vendor including incidental and consequential damages. Failure by the Treasurer to issue a warning or cancel this Agreement does not waive any of the Treasurer's rights to issue subsequent warnings.

## **F. Work product**

1. Ownership of work product.

Except as otherwise agreed to in an Implementing Agreement, all work product, including, but not limited to, documents, reports, data, information, designs, code, and ideas specially produced, developed, or designed by the Contractor for the Consortium or a Member under the Agreement and any Implementing Agreement, whether preliminary or final, including any copyright or service marks developed by the Contractor on behalf of the Consortium or a Member (collectively, "Work Product") will become and remain the property of the Consortium in the case of Work Product for the Consortium or such Member in the case of Work Product for a Member. The Consortium shall have the right to use all Work Product

for the Consortium and a Member shall have the right to use all Work Product for such Member without restriction or limitation and without further compensation to the Contractor.

## 2. Return of Work Product

Except as otherwise agreed to in an Implementing Agreement, within thirty (30) days after expiration or termination of the Agreement, the Contractor shall deliver to a Member, or to a third party, if so instructed by a Member, all Work Product in Contractor's possession in the performance of the Agreement. If requested by a Member, the Contractor shall certify in writing that all such Work Product has been delivered to the Member.

### **G. State furnished property**

Contractor shall be responsible for the security, protection, and return of all property furnished by any Member, if any, including but not limited to, items, research materials, photographs, and drawings.

### **H. Internal controls**

Contractor shall annually provide each Member with a copy of the Annual Report or Form 10-K of its parent bank holding company, which shall include the attestation of the company's independent registered accounting firm regarding the company's internal control over financial reporting.

### **I. Back-up facilities**

Upon execution of the Agreement, the Contractor and its subcontractor(s), if applicable, shall provide each Member a summary of their disaster recovery plan, back-up plan, and testing schedule.

### **J. Indemnification**

The Contractor will indemnify, defend, and hold all Members, their officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, lawsuits, losses, damages, causes of action, fines, or judgments, including costs, attorneys' and witnesses' fees and expenses incident thereto, for all injuries, including, but not limited to, injuries to person and for loss of, damage to, or destruction of property due to the Contractor's negligent acts or omissions or willful misconduct of Contractor, its employees, or its agents in connection with this RFP, the Agreement, and any Implementing Agreements.

### **K. Liability of Contractor**

Contractor shall be liable to any Member for actual and compensatory damages that are available to such Member in law or remedies in equity.

**L. Review**

The Treasurer may conduct periodic performance reviews of the Contractor, during which its compliance with all aspects of the Agreement will be reviewed and assessed. A Member may conduct periodic performance reviews of the Contractor, during which its compliance with all aspects of the Member's respective Implementing Agreement will be reviewed and assessed.

**M. Access to information**

Upon request from a Member, the Contractor shall provide such Member access to all files, records, Account Owner/Beneficiary email addresses, documents, and data pertaining to the Agreement (as it relates to the requesting Member) and the requesting Member's Implementing Agreement that are in Contractor's possession and control, regardless of how that information is stored. The information shall be provided in a form acceptable to the requesting Member.

**N. Subcontractors**

The Contractor may not use subcontractors to perform the Services, unless the subcontractor is approved in advance by the Treasurer. Contractor must disclose the duties to be performed by the subcontractor. The Contractor will be required to obtain written approval from the Treasurer, which will not be unreasonably withheld, prior to adding or changing subcontractors. The Contractor may not submit for approval any subcontractor that is debarred by a Member. Subcontractors will be required to complete the attached State Certifications and Disclosure Forms, attached as Appendix L.

Contractor has a duty to select, with due diligence, all other entities that shall be necessary to implement the Agreement and Implementing Agreements. Contractor shall establish and enforce reasonable procedures to assure the Treasurer of the performance by all other entities of the services necessary to implement this Agreement.

**O. Record retention and audit**

1. Agreement

Contractor and subcontractors, if any, agree to maintain books and records related to the performance of the Agreement and necessary to support amounts charged to the Treasurer under the Agreement for a minimum of four (4) years from the last action on the Agreement or after termination of the Agreement, whichever is longer. Contractor and subcontractors further agree to cooperate fully with any audit and to make the books and records available for review and audit by the Illinois Auditor General, chief procurement officers, internal auditor and the representatives of the Members; Contractor agrees to cooperate fully with any audit conducted by the Illinois Auditor General or a Member and to provide full access to all relevant materials. The four (4) year period shall be extended for the duration of any audit in progress during the term. Failure to maintain the books, records and supporting documents required by this Section shall establish a presumption in

favor of the Treasurer for the recovery of any funds paid by the Treasurer under the Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

## 2. Implementing Agreement

Contractor and subcontractors, if any, agree to maintain books and records related to the performance of a Member's Implementing Agreement and necessary to support amounts paid to or collected by the Contractor or any subcontractor under such Implementing Agreement for a minimum of four (4) years from the last action on the Implementing Agreement or after termination of the Implementing Agreement, whichever is longer. Contractor and subcontractors further agree to cooperate fully with any audit and to make the books and records available for review and audit by the Member's Auditor General, chief procurement officers, internal auditor and the representatives of the Member; Contractor agrees to cooperate fully with any audit conducted by the Member's Auditor General or the Member and to provide full access to all relevant materials. The four (4) year period shall be extended for the duration of any audit in progress during the term. Failure to maintain the books, records and supporting documents required by this Section shall establish a presumption in favor of the Member for the recovery of any funds paid to or collected by the Contractor or any subcontractor under such Member's Implementing Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement or collection.

## **P. Confidentiality and security requirements**

### 1. Confidential Information

All Confidential Information, as defined below, shall be held in strict confidence by the Contractor and shall not be disclosed to any third party. Confidential Information includes all information but the following: (i) information already known or independently developed by the recipient; (ii) information required to be released by law; (iii) information in the public domain through no wrongful act of the recipient; and (iv) information received by the recipient from a third party who was free to disclose it ("Confidential Information").

Any disclosure required to be made by applicable law shall not be made sooner (unless otherwise compelled or required by law or judicial process) than five (5) business days immediately following receipt by the Treasurer from the Contractor of written notice of such order, and such notice will include a copy of any relevant court or other order. In the event the Contractor is ordered to disclose Confidential Information pertaining to a Member(s), the Contractor shall afford such Member(s) a reasonable opportunity to participate and object to any such disclosure. In the event Contractor is ordered to disclose any other Confidential Information, the Contractor shall afford the Treasurer a reasonable opportunity to participate and object to any such disclosure.

### 2. Use of Confidential Information by Employees and Agents of Contractor

The requirement of confidentiality under this Agreement also applies to the employees and agents of the Contractor. The Contractor shall use its best efforts to ensure that its employees and agents adhere to the confidentiality requirements set forth herein. Use by and disclosure to employees and agents of Confidential Information to the extent necessary to carry out the terms and purposes of the Agreement is acceptable.

### 3. Protection of Confidential Information

The Contractor represents, warrants, and covenants that it has implemented and will maintain an information security program reasonably designed to protect Confidential Information, including customer information, which program includes administrative, technical, and physical safeguards to ensure the security and confidentiality of all customer information, to protect against anticipated threats or hazards to the security or integrity of such customer information, and to protect against unauthorized access to or use of such customer information.

### 4. Privacy Policy

Contractor will comply with any applicable federal or state laws or regulations, as well as any privacy policy developed by the Treasurer in consultation with the Consortium. Contractor further agrees to establish, maintain, and comply with a privacy policy with respect to the Services that meets the requirements of applicable law.

### 5. Program Lists

The Contractor specifically agrees that it shall not, and shall cause its subcontractors and affiliates not to, sell, provide, or otherwise disclose information from, any Member's program list to any third party, unless otherwise directed to or approved by such Member or required by applicable law.

## **Q. Assignment**

Each term and provision of the Agreement is binding and enforceable against and inures to the benefit of any successors of the Treasurer and any successors of Contractor, but neither the Agreement nor any of the rights or obligations under the Agreement may be transferred or assigned by Contractor or subcontractor, if applicable, without the Treasurer's prior written consent. Any attempt by Contractor or subcontractor, if applicable, to transfer or assign any rights or obligations related to the Agreement without the prior written consent of the Treasurer shall render the Agreement voidable by the Treasurer. The Treasurer may unilaterally bind any successor of the Contractor to the terms and conditions of the Agreement. The Treasurer may assign this Agreement at any time to any Member, unanimously approved by the Consortium.

## **R. Continuation of Services**

The Contractor shall guarantee performance of the Services and agree to perform all Services in an efficient and professional manner. The Contractor's obligations and

responsibilities pursuant to the Agreement and Implementing Agreements shall not be affected in the event of personnel problems, strike by employees, work stoppages, and other employee-related events. The Contractor is responsible for and shall provide commercially reasonable backup systems and shall review the adequacy of those systems with the Consortium upon request. The prevention of such business interruption shall be the sole responsibility of the Contractor, and the Contractor shall immediately notify the Consortium in the event such business interruption takes place. The Contractor shall be liable for any losses or damages sustained by any Member due, in whole or in part, to the Contractor's failure to provide reasonable backup systems.

**S. Enforceability**

The Contractor shall certify that the execution and delivery by the Contractor of the Agreement and the performance by the Contractor of its obligations pursuant to the Agreement have been duly and validly authorized, with no other corporate action on the part of the Contractor or its stockholders being necessary. The Contractor shall certify that it has the full legal right, power, and authority to execute and deliver the Agreement and to perform its obligations pursuant to the Agreement, and that the Agreement has been duly and validly executed and delivered by the Contractor, thereby constituting a legal, valid, and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms.

**T. No Conflicts**

The Contractor shall certify that the execution and delivery by the Contractor of the Agreement, the performance by Contractor of its duties and obligations thereunder, and the consummation of the transactions contemplated do not result in any of the following:

1. Conflict with or result in a violation or breach of any of the terms, conditions, or provisions of the charter or by-laws of Contractor;
2. Conflict with or result in a violation or breach of any term or provision of a) any law, rule, regulation, judgment, decree, order, or injunction applicable to the Contractor or any of its assets and properties or b) any agreement binding on or affecting the Contractor or any of its properties; or
3. Conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under any material agreement to which the Contractor is a party, or any material obligation or responsibility which the Contractor has to any third party.

**U. No Pending or Threatened Litigation**

The Contractor shall certify that there is no action, suit, investigation, or proceeding pending or, to the best knowledge of the Contractor, threatened against the Contractor before any court, arbitrator, or administrative or governmental body that might result in any material adverse change in the operations of the Contractor or which might materially and

adversely affect the ability of the Contractor to provide the Services or otherwise comply with its obligations under the Agreement and/or any Implementing Agreements.

**V. Most Favorable Terms**

If more favorable terms are granted by the Contractor to any state in a contemporaneous agreement under the same or similar financial terms and circumstances for comparable services, the more favorable terms will be applicable under the Agreement.

**W. Change of Law or Policy**

The Contractor shall notify the Consortium in writing within ten (10) business days of any change or addition applicable to the Contractor in federal or state regulations or laws that would adversely affect either the terms of or the rights granted the Consortium by the Agreement and/or any Implementing Agreements, and within five (5) business days of any legally required change in or addition to Contractor's internal operational policy that might affect the Contractor's provision of the Services, including but not limited to any policy that relates to management, maintenance, record keeping, safekeeping, custody, or subcontracting.

**X. Modification of the Agreement**

The Services to be provided under the Agreement shall be subject to modification and supplementation only upon the written agreement of the duly authorized representatives of the contracting parties. No modification of the terms of the Agreement shall be made that would materially change the delivery of service, unless such changes are mutually agreed by and between the Treasurer and the Contractor and shall be incorporated in written amendments to the Agreement, processed through and approved by the Treasurer.

In the event that the Program does not fully comply with all final U.S. Treasury/IRS regulations regarding ABLE, the Contractor will work with the Treasurer to amend the Agreement to bring the Program into compliance within the time frame permitted by such regulations. Additionally, if the final U.S. Treasury/IRS regulations authorize program elements that, in the sole judgment of the Consortium, are more beneficial to the Program or its Account Owners/Beneficiaries than in the Agreement, the Contractor will work with the Treasurer to amend the Agreement to include such elements within a reasonable amount of time.

**Y. State Certifications/Disclosures**

The Agreement will incorporate Contractor's fully executed State Certifications and Disclosure Forms, copies of which are attached hereto as Appendix L. Contractors and subcontractors should anticipate that Members may require similar certifications and disclosures as part of their respective Implementing Agreements.

# Appendix A - Alaska STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES

The parties' contract comprises this Standard Agreement Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number	2. DGS Solicitation Number	3. Financial Coding	4. Agency Assigned Encumbrance Number
5. Vendor Number	6. Project/Case Number	7. Alaska Business License Number	

**This contract is between the State of Alaska,**

8. Department of	Division	hereafter the State, and		
9. Contractor				
hereafter the Contractor				
Mailing Address	Street or P.O. Box	City	State	ZIP+4

10. **ARTICLE 1. Appendices:** Appendices referred to in this contract and attached to it are considered part of it.

**ARTICLE 2. Performance of Service:**

2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract.

2.2 Appendix B sets forth the liability and insurance provisions of this contract.

2.3 Appendix C sets forth the services to be performed by the contractor.

**ARTICLE 3. Period of Performance:** The period of performance for this contract begins \_\_\_\_\_, and ends \_\_\_\_\_.

**ARTICLE 4. Considerations:**

4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$\_\_\_\_\_ in accordance with the provisions of Appendix D.

4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:

11. Department of	Attention: Division of
Mailing Address	Attention:

<b>12. CONTRACTOR</b>		14. <b>CERTIFICATION:</b> I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Name of Firm			
Signature of Authorized Representative	Date		
Typed or Printed Name of Authorized Representative			
Title			
<b>13. CONTRACTING AGENCY</b>		Signature of Head of Contracting Agency or Designee	Date
Department/Division	Date		
Signature of Project Director			
Typed or Printed Name of Project Director			
Title			

**NOTICE: This contract has no effect until signed by the head of contracting agency or designee.**

## APPENDIX A

### GENERAL PROVISIONS

#### Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

#### Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

#### Article 3. Disputes.

- 3.1 If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

#### Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

#### Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of a breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

#### Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

#### Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

#### Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

#### Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

**Article 10. Ownership of Documents.**

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

**Article 11. Governing Law; Forum Selection**

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

**Article 12. Conflicting Provisions.**

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

**Article 13. Officials Not to Benefit.**

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

**Article 14. Covenant Against Contingent Fees.**

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

**Article 15. Compliance.**

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

**Article 16. Force Majeure:**

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

**APPENDIX B<sup>2</sup>**  
**INDEMNITY AND INSURANCE**

**Article 1. Indemnification**

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

**Article 2. Insurance**

Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a notice of cancellation, nonrenewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

**2.1 Workers' Compensation Insurance:** The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

**2.2 Commercial General Liability Insurance:** covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

**2.3 Commercial Automobile Liability Insurance:** covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

**2.4 Professional Liability Insurance:** covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

<b>Contract Amount</b>	<b>Minimum Required Limits</b>
Under \$100,000	\$300,000 per Occurrence/Annual Aggregate
\$100,000-\$499,999	\$500,000 per Occurrence/Annual Aggregate
\$500,000-\$999,999	\$1,000,000 per Occurrence/Annual Aggregate
\$1,000,000 or over	Refer to Risk Management

## Appendix B - Iowa

### IOWA TERMS AND CONDITIONS

1. Nondiscrimination. None of the parties shall engage in any discriminatory practices based on age, race, color, creed, religion, national origin, sex, sexual orientation, gender identity, or disability, and will comply with all provisions of federal, State, and local regulations against discrimination. Contractor shall include provisions in its agreements with authorized Subcontractors requiring such compliance.

2. Confidentiality.

(a) Each party agrees that it shall hold the Confidential Information (as defined below) of each other party in strict confidence and not disclose such Confidential Information to any third party, except for disclosures to Participants of Confidential Information relating to them or their Accounts, unless such disclosure is required by applicable law, including Chapter 22 of the Code of Iowa. "Confidential Information" means such information relating to a party's business activities, financial activities, clients (including but not limited to the identity thereof), products, services, research and development, processes, technical data, techniques, computer software, designs, financial planning practices, computer source code, and marketing plans obtained from any source as a result of this Agreement, whether in a tangible form or an intangible form and whether or not marked as confidential, together with all such other information designated by a party as confidential. Notwithstanding the foregoing, Confidential Information shall not include information in the public domain or otherwise available to the public. In the event any party is ordered to disclose Confidential Information of any other party by order of a court, government agency or other such order, such party shall afford to the other parties a reasonable opportunity to participate and object, at the other parties' expense, to any such disclosure.

(b) The requirement of confidentiality under this Agreement applies to the parties to this Agreement and their respective employees, agents, affiliates, and delegates. Each party hereto shall use its best efforts to ensure that its employees and agents and its delegates and their employees and agents adhere to the confidentiality requirements set forth herein. Use and disclosure of proprietary and Confidential Information by employees and agents to the extent necessary to carry out the terms and purposes of this Agreement is acceptable.

3. Governing Law. This Agreement shall be interpreted and construed under the laws of the State without reference to its conflicts of laws principles.

4. Litigation. In any proceeding litigated in court arising out of or relating to this Agreement, the parties agree to waive a jury trial. It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to any rights or any relationship between the parties arising therefrom shall, to the extent jurisdiction can be established, initiated and maintained in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If, however jurisdiction is not proper in the Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, provided that jurisdiction is proper in that court. If federal jurisdiction cannot be established with

respect to any such action or proceeding, such action or proceeding may be initiated and maintained in State courts. Contractor and the Treasurer each irrevocably consents to the jurisdiction of such courts in any such action or proceeding and waives any jurisdictional objections it may have to any such action or proceeding.

5. Delegation of Services. Any delegation of services hereunder by Contractor shall be subject to the prior written consent of the Treasurer, and any contract to be entered into by Contractor providing for a delegation of Services shall be subject to the prior written approval of the Treasurer.

6. Trust Records, Intellectual Property and Marketing Materials Ownership.

(a) Trust Records. The Trust shall own, and such have full, sole and all right, title, interest in and exclusive beneficial ownership of all records, books, documents, reports, correspondence, papers, print-outs, and agreements solely or primarily relating to the Trust (exclusive of "Trust Information Technology" as specified below) (collectively "Trust Records") during and after this Agreement, regardless of by whom created and whether or not in the possession of the Treasurer, provided, however, that nothing herein shall affect Contractor's ability to create, maintain and preserve Trust Records in the customary course of its operations in accordance with this Agreement or as required under applicable law or affect Contractor's ownership, or its subcontractors' respective ownership, of Contractor Intellectual Property or Subcontractor Intellectual Property (as defined below). Contractor agrees to maintain all Trust Records for three (3) years following the date of final payment under this Agreement, or completion of any audit by the State, whichever is earlier. The Auditor of the State or any authorized representative of the State shall have access to, and the right to examine, audit, excerpt, and transcribe any directly pertinent Trust Records, at the Treasurer's expense. The Treasurer shall give reasonable notice to Contractor of the Treasurer's intent to conduct such an audit.

(b) Trust Information Technology. Documents, files, know-how and other intellectual property developed by Contractor or its subcontractors, respectively, to perform the Services under this Agreement or any subcontract (including without limitation investment allocation methodologies and know-how, and any software and analytical tools as are otherwise owned by Contractor or its subcontractors and utilized and developed by or for the management, marketing and administration of the Trust) shall remain the property of Contractor ("Contractor Intellectual Property") or its subcontractors ("Subcontractor Intellectual Property"), as applicable. In addition, Contractor and/or third party licensors providing software and/or other technology to Contractor for development, modification and/or operation of the Trust, shall own and continue to own, during and after this Agreement, all right, title and interest in and exclusive beneficial ownership of all software and source code (including superseded versions), system design materials, system testing materials, system technical support materials, system training materials, and other components of such information technology relating to the development modification and/or operation of the Trust, whether created before or during the term of this Agreement as their respective interests may be determined by them.

(c) Trust Trademarks and Copyrights. The Trust shall own and, shall have full, sole, and all right, title, interest in and exclusive beneficial ownership, during and after this Agreement, of (i) trademark(s), and logo(s), developed and/or used solely in connection with the Trust (which shall not include or be confusingly similar to any and all trademarks, and/or logos owned by Contractor or then in use by Contractor as the case may be) (collectively, "Trust Trademarks") and (ii) any copyrighted material relating solely to the Trust that it creates (collectively "Trust Copyrights").

(d) Trust Marketing Materials. The Trust shall own and, as such have full, sole and all right, title, interest in and exclusive beneficial ownership, during and after this Agreement, of the Marketing materials that relate solely to the Trust (collectively, "Trust Marketing Materials"); provided, however, that the Trust grants to Contractor a royalty-free, transferable license during the term of this Agreement (i) to create marketing-related materials based on or derived from the Trust Marketing Materials that may include Trust Trademarks and Trust Copyrights, and (ii) to use, including the right to modify or create derivatives of the format of the Trust Records (collectively constituting "Derivative Materials"); provided, however, that nothing provided herein shall interfere with Contractor's ability to use Derivative Materials and marketing materials with other states which are similar to Trust Marketing Materials as long as such marketing or Derivative Materials are used by Contractor in a manner that will not cause confusion with respect to the Trust. Notwithstanding anything to the contrary herein, Contractor shall retain ownership of all photos, trademarks, service marks and Contractor Intellectual Property and Subcontractor Intellectual Property supplied in connection with Trust Marketing Materials; and provided, further, that the Trust's right, title, interest in and exclusive beneficial ownership in the Trust Marketing Materials shall not be construed to allow the Trust or the Treasurer after the term of this Agreement to use the photos, trademarks, service marks, Contractor Intellectual Property, or Subcontractor Intellectual Property originally provided by Contractor without the express written consent of Contractor .

(e) Cooperation. As owner of the Trust Trademarks and Trust Copyrights, the Trust shall retain all rights to protect and police the Trust Trademarks and Trust Copyrights. In the event that the Trust elects not to protect or police any such trademarks, or copyrights, Contractor shall have the right but not the obligation to, at its own cost and expense, take all necessary legal, administrative and/or other action to protect and police such trademarks, or copyrights. In the event an action is instituted by Contractor or the Trust, each party agrees to provide its full cooperation and to render all necessary assistance to the other in the pursuit of such action, and agrees that any monetary recovery from such action shall be shared equitably by Contractor and the Trust.

(f) Disputes; Cooperation. In performing services hereunder, and in the event of any action, suit, investigation, or similar proceeding involving Contractor that is brought in connection with the Trust, during and after this Agreement, Contractor and shall have full access to the relevant Trust Records and Trust Marketing Materials and, to the fullest extent permitted by law, the Trust shall cooperate fully without charge to Contractor in connection with any such action, suit, investigation, or similar proceeding.

7. Term. Unless sooner terminated as provided herein, this Agreement shall continue in effect for a period of four (4) years (the "Initial Term").

8. Termination by the Treasurer. This Agreement may be terminated as to Contractor without penalty at any time by the Treasurer upon written notice to Contractor: (i) provided that the Treasurer is not then in material breach of any representation, warranty, covenant or other agreement contained herein, if Contractor is in material breach of this Agreement and such breach is not cured within 60 days (120 days in the case of a material breach caused by computer system failure), or such greater or lesser period as may be expressly provided by the particular provisions hereof, following written notice to Contractor from the Treasurer of such breach; (ii) immediately by the Treasurer upon a failure by Contractor to meet the Processing Service Level Standards for a period of three consecutive months; (iii) upon mutual consent of the parties; (iv) by the Treasurer in the event of the commission of any acts of fraud, deceit or criminal wrongdoing by any employees or agents of Contractor that have the potential to result in material adverse reputational damage to the Trust or the Treasurer; (v) if Contractor ceases to provide services to the Qualified Tuition Program industry; (vi) in the event changes in the law make operation of the Trust impossible or reasonably impractical or otherwise make the provisions of this Agreement reasonably impractical or inoperable; or (vii) upon 30 days' prior written notice, if Contractor files a petition in bankruptcy, insolvency, or similar protection from creditors, is adjudicated bankrupt or insolvent, becomes subject to a proceeding of reorganization, readjustment or rearrangement of its position under any law or regulation relating to bankruptcy or insolvency, has a receiver appointed for all or substantially all of its property, makes an assignment for the benefit of its creditors, or institutes proceedings for the liquidation, dissolution or winding up of its business or any similar proceeding.

9. Termination by Contractor. This Agreement may be terminated in its entirety without penalty at any time by Contractor upon written notice to the Treasurer: (i) provided that Contractor is not then in material breach of any representations, warranties, covenants or agreements contained herein, if the Treasurer is in material breach of this Agreement and such breach is not cured within 30 days (120 days in the case of a breach caused by computer system failure), or such greater or lesser period as may be expressly provided by the particular provisions hereof, following written notice to the Treasurer from Contractor of such breach; (ii) upon mutual consent of the parties; (iii) in the event of the commission of any acts of fraud, deceit or criminal wrongdoing by any employee or agent of the Treasurer in connection with the Trust; (iv) in the event that federal or state laws are modified, administered, interpreted or enforced in such a way that Contractor is no longer able to perform, or is prohibited from performing, its obligations under this Agreement; or (v) in the event the Trust, Treasurer or State of Iowa makes changes or requires Contractor to make changes to the Trust or Trust Description that materially affect the economics of Contractor's role in the Trust.

10. Cooperation. The parties shall cooperate with each other in a commercially reasonable manner in order that the duties and obligations of the parties hereunder may be effectively discharged. Each party shall take such further action as any other party hereto may from time to time reasonably request in order to carry out the intent and purpose of this Agreement, including consideration of amendments to this Agreement which may be necessary in light of changes affecting the Trust.

11. Severability. The invalidity of or inability to enforce any provision of this Agreement will not affect the other provisions, and this Agreement will be construed in all respects to the extent possible to fulfill the purposes of this Agreement as if such invalid or unenforceable provision were omitted. To the extent any provision of this Agreement is held to be invalid or unenforceable, the parties agree to negotiate in good faith in an effort to adopt revised provisions designed to reflect the original intention of the parties and the purposes of the Agreement.

12. Successors. This Agreement shall be binding upon and inure to the benefit of, Contractor, the Treasurer and the Trust and their respective successors and permitted assigns. All references herein to the Treasurer shall be deemed to include any successor to the functions thereof under the Act with respect to the Trust. All references herein to Contractor shall be deemed, respectively, to include any corporate successor thereto.

13. Third Party Beneficiaries. The provisions of this Agreement are solely for the benefit of Contractor, the Treasurer and the Trust and nothing in this Agreement shall be construed to give to any other person any legal or equitable right, remedy or claim under or in respect to this Agreement or any provision contained herein.

14. Force Majeure. None of the parties shall be responsible for delays or failures in performance resulting from acts beyond the reasonable control of such party. Such acts shall include, but not be limited to, acts of God, riots, acts of war, terrorism, epidemics, governmental regulations superimposed after the fact, changes in the laws, rules and regulations applicable to the Trust or "Qualified Tuition Programs" that cause a substantial hardship to any party, fire, earthquakes, or other disasters ("Uncontrollable Event"). Additionally, each party acknowledges and agrees that the ability of the parties to perform their respective obligations described hereunder depends on the timely and adequate performance by third-party vendors supplying necessary services and materials. No party shall be responsible for delays or failures in performance hereunder if caused by delays or failures by third party vendors beyond the control of the party; such failure by a vendor shall, together with an Uncontrollable Event, be known as a "Force Majeure" unless the failure was also accompanied by the party's failure to exercise reasonable care in selecting or retaining such third party vendor. In the event that any party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of a Force Majeure, the party who has been so affected shall immediately give notice to the other parties and shall do everything commercially reasonable to resume performance. Upon receipt of such notice, all obligations affected by the Force Majeure under this Agreement shall be immediately suspended. If the period of nonperformance exceeds forty-five (45) days from the receipt of notice of a Force Majeure, any party that has the ability to perform and has not been so affected may, by giving written notice, immediately terminate this Agreement provided that the obligations affected by the Force Majeure are material.

15. Other Limitations. It is understood and agreed to by the parties that nothing contained herein shall create any obligation of or right to look to any official, director, officer, employee or stockholder of a party or its affiliates, for the satisfaction of the obligations hereunder, and no judgment, order or execution with respect to or in connection with this Agreement shall be taken against any such official, director, officer, employee or stockholder.

16. No Waiver. No act, delay or omission done, suffered or permitted by one party or its subsidiaries, affiliates, delegates or assignees shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve any other party from the full performance of this Agreement, no waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement, and no waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party.

17. Liability of and Indemnification by Contractor. Contractor will be liable to and shall indemnify, defend and hold harmless the Trust, the Treasurer, and the officers, directors, employees and agents of any of them having responsibilities in connection with the Trust (collectively, the "Indemnitees"), from and against any and all losses, costs, claims, liabilities, penalties, demands, and expenses, including without limitation reasonable attorneys' fees and disbursements, but excluding consequential, punitive, indirect or special damages, ("Losses") suffered, incurred or sustained by the Indemnitees or to which any of them becomes subject, to the extent resulting from, arising out of or relating to (i) a breach by Contractor of its duties, obligations, representations, warranties or covenants under this Agreement, or (ii) any negligence, willful misconduct or fraud by Contractor or their officers, employees, agents, representatives, Affiliates, delegates or Approved Subcontractors with respect to, related to or concerning any of their duties or obligations under this Agreement. Notwithstanding the foregoing, an Indemnitee will not be entitled to indemnification hereunder to the extent that (i) any Indemnitee (including any Indemnitee not seeking indemnification) acted in bad faith and, in the case of a criminal proceeding, had reasonable cause to believe that its, his or her conduct was unlawful or (ii) such Losses arose from a material violation of this Agreement by, or the negligence, willful misconduct or fraud of, or willful violation of law by, any Indemnitee (including any Indemnitee not seeking indemnification).

18. Audit Expenses. The Treasurer shall bear the cost of an audit of the Trust by the Auditor of the State every year. Contractor will promptly comply with any requests for information concerning the Trust made by the Auditor of the State in connection with such audit or otherwise and will provide the Auditor of the State with access to their books and records with respect to the Trust and to their own audits as requested.

19. Amendment. This Agreement may be amended only by an instrument in writing signed by the parties.

20. Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior understandings and communications, whether written or oral with respect to such subject matter.

# Appendix C - Kansas

State of Kansas  
Department of Administration  
DA-146a (Rev. 06-12)

## CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- 10. Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- 11. Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- 13. Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

## Appendix D - Minnesota

### VI. REQUIRED TERMS AND CONDITIONS

**A. Requirements.** All Responders must be willing to comply with all state and federal legal requirements regarding the performance of the Contract. The requirements are set forth throughout this RFP and are contained in the attached Draft Contract.

**B. Governing Law/Venue.** This RFP and any subsequent contract must be governed by the laws of the State of Minnesota. Any and all legal proceedings arising from this RFP or any resulting contract in which the State is made a party must be brought in the State of Minnesota, District Court of Ramsey County. The venue of any federal action or proceeding arising here from in which the State is a party must be the United States District Court for the State of Minnesota.

**C. Travel.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Minnesota Management and Budget. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

**D. Preparation Costs.** The State is not liable for any cost incurred by Responders in the preparation and production of a Proposal. Any work performed prior to the issuance of a fully executed contract will be done only to the extent the Responder voluntarily assumes risk of non-payment.

**E. Contingency Fees Prohibited.** Pursuant to Minn. Stat. §10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

**F. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must certify the following, as required by the regulations implementing Executive Order 12549.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was

erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **G. Insurance Requirements**

1. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

2. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

**a. Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee  
\$500,000 – Bodily Injury by Disease aggregate  
\$100,000 – Bodily Injury by Accident

If Minnesota Statute, section 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

**b. Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence  
\$2,000,000 – annual aggregate  
\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage  
Personal and Advertising Injury  
Blanket Contractual Liability  
Products and Completed Operations Liability  
Other; if applicable, please list \_\_\_\_\_  
State of Minnesota named as an Additional Insured, to the extent permitted by law

**c. Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

**d. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance (if applicable)**

The retroactive or prior acts date of such coverage shall not be after the effective date of this contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If Contractor discontinues such insurance, then extended reporting period coverage must be purchased to fulfill this requirement.

This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

### 3. Additional Insurance Conditions:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance listed in VI.G.2.d. above;
- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and

- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

4. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

5. The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the contract.

## H. Contingency of Operations Planning Requirement

Functions identified under this request for proposal have been designated as Priority 1 or Priority 2 services under the Minnesota Department of Human Service's Continuity of Operations Plan. Due to this designation, the successful responder will be required to develop a contingency of operations plan to be implemented in the event of a gubernatorial or commissioner of the Minnesota Department of Health declared health emergency. The successful responder will be expected to have a contingency of operations plan available for inspection by the State upon request. The contingency of operations plan shall do the following:

- (a) ensure fulfillment of Priority 1 or Priority 2 obligations under the contract;
- (b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- (c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the State with regard to emergency preparedness and response issues, the EPRC shall provide updates to the State as the health emergency unfolds;
- (d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;
- (e) provide alternative operating plans for Priority 1 or Priority 2 functions;
- (f) include a procedure for returning to normal operations; and
- (g) be available for inspection upon request.

## I. Criminal Background Check Required

The State is responsible for providing a safe work environment for its employees and customers as well as protecting and safeguarding protected information about individuals and the State's financial, physical, technological and intellectual property. As State provides employment opportunities for qualified persons, it must also ensure the safety and security of all State employees, customers and assets.

Therefore, all contracted employees who are working in State's Central Office locations are required to either:

1) Provide evidence of a computerized criminal history systems background check (hereinafter CCH background check") performed by the contractor within the last 12 months for each of contractor's employee's working in State's Central Office. "CCH background check" is defined as a background check including a search of the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension. or

2) Fill out and submit an informed consent form for criminal background check provided by State for each of contractor's employee's working in State's Central Office. State will conduct a criminal background check using the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.

An unsatisfactory background check may result in withdrawal of a contract offer.

#### **J. E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

By submission of a proposal for services in excess of \$50,000, CONTRACTOR certifies that as of the date of services performed on behalf of the STATE, CONTRACTOR and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the STATE. In the event of contract award, CONTRACTOR shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc> All subcontractor certifications must be kept on file with CONTRACTOR and made available to the STATE upon request.

# Appendix E - Missouri

## STATE OF MISSOURI DIVISION OF PURCHASING TERMS AND CONDITIONS -- REQUEST FOR PROPOSAL

### 1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in a Request for Proposal (RFP) document or any addendum thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing (Purchasing)**. The agency is also responsible for payment.
- b. **Addendum** means a written, official modification to an RFP.
- c. **Amendment** means a written, official modification to a contract.
- d. **Attachment** applies to all forms which are included with an RFP to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- e. **Proposal End Date and Time** and similar expressions mean the exact deadline required by the RFP for the receipt of sealed proposals.
- f. **Vendor** means the supplier, offeror, person, or organization that responds to an RFP by submitting a proposal with prices to provide the equipment, supplies, and/or services as required in the RFP document.
- g. **Buyer** means the procurement staff member of Purchasing. The **Contact Person** as referenced herein is usually the Buyer.
- h. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- i. **Contractor** means a supplier, offeror, person, or organization who is a successful vendor as a result of an RFP and who enters into a contract.
- j. **Exhibit** applies to forms which are included with an RFP for the vendor to complete and submit with the sealed proposal prior to the specified end date and time.
- k. **Request for Proposal (RFP)** means the solicitation document issued by Purchasing to potential vendors for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Addendums thereto.
- l. **May** means that a certain feature, component, or action is permissible, but not required.
- m. **Must** means that a certain feature, component, or action is a mandatory condition.
- n. **Pricing Page(s)** applies to the form(s) on which the vendor must state the price(s) applicable for the equipment, supplies, and/or services required in the RFP. The pricing pages must be completed and submitted by the vendor with the sealed proposal prior to the specified proposal end date and time.
- o. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of Purchasing.
- p. **Shall** has the same meaning as the word **must**.
- q. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

### 2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and Purchasing.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the RFP or resulting contract shall be in the Circuit Court of Cole County, Missouri.
- f. The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

### 3. CONTRACT/PURCHASE ORDER

The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and Purchasing or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

### 4. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of Purchasing.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFP.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in section 34.055, RSMo.
- g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

### 5. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## **6. INSPECTION AND ACCEPTANCE**

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

## **7. WARRANTY**

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by Purchasing, (2) be fit and sufficient for the purpose expressed in the RFP, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

## **8. CONFLICT OF INTEREST**

- a. Elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.452 and 105.454, RSMo, regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the proposal the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

## **9. REMEDIES AND RIGHTS**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

## **10. CANCELLATION OF CONTRACT**

- a. In the event of material breach of the contractual obligations by the contractor, Purchasing may cancel the contract. At its sole discretion, Purchasing may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide Purchasing within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, Purchasing will issue a notice of cancellation terminating the contract immediately. If it is determined Purchasing improperly cancelled the contract, such cancellation shall be deemed a termination for convenience in accordance with the contract.
- c. If Purchasing cancels the contract for breach, Purchasing reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as Purchasing deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

## **11. COMMUNICATIONS AND NOTICES**

Any notice to the vendor/contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the vendor/contractor.

## **12. BANKRUPTCY OR INSOLVENCY**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify Purchasing immediately.
- b. Upon learning of any such actions, Purchasing reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

## **13. INVENTIONS, PATENTS AND COPYRIGHTS**

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

## **14. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status

unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, Purchasing shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by Purchasing until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

## **15. AMERICANS WITH DISABILITIES ACT**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

## **16. FILING AND PAYMENT OF TAXES**

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore the vendor's failure to maintain compliance with chapter 144, RSMo, may eliminate their proposal from consideration for award.

## **17. TITLES**

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 10-19-15

# Appendix F - Nevada

For Purchasing Use Only: RFP/Contract #3221
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## CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada  
Acting by and Through Its

### Contracting Agency Name

Address

City, State, Zip Code

Contact:

Phone:

Fax:

Email:

and

### Vendor Name

Address

City, State, Zip Code

Contact:

Phone:

Fax:

Email:

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners (BOE), services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada.

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.**
  - A. "State" – means the State of Nevada and any State agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
  - B. "Independent Contractor" – means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract.
  - C. "Fiscal Year" – is defined as the period beginning July 1st and ending June 30th of the following year.
  - D. "Current State Employee" – means a person who is an employee of an agency of the State.
  - E. "Former State Employee" – means a person who was an employee of any agency of the State at any time within the preceding 24 months.
3. **CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 10, Contract Termination*. Contract is subject to Board of Examiners' approval (anticipated to be Date).

Effective from:	Date	To:	Date
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4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of termination for default, or notice of termination without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, posted prepaid on the date posted, and addressed to the other party at the address specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	STATE SOLICITATION OR RFP #:**** and AMENDMENT(S) # **
ATTACHMENT BB:	INSURANCE SCHEDULE
ATTACHMENT CC:	CONTRACTOR'S RESPONSE

A Contractor's attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in Section 5, *Incorporated Documents* at a cost as noted below:

\$	per	
----	-----	--

Total Contract or installments payable at:	
--	--

Total Contract Not to Exceed:	\$
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The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.
8. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the Contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the state no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the state of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.
9. **INSPECTION & AUDIT.**
- A. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes.

- B. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant State agency or its contracted examiners, the department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the state Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this Section.
- C. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the state, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is schedule or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

#### 10. **CONTRACT TERMINATION.**

- A. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.
- B. State Termination for Non-Appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the state Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- C. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:
- 1) If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
  - 2) If any State, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
  - 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
  - 4) If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
  - 5) If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
  - 6) If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- D. Time to Correct. Termination upon declared default or breach may be exercised only after service of formal written notice as specified in *Section 4, Notice*, and the subsequent failure of the defaulting party within fifteen (15)

calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

E. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this Section survive termination:

- 1) The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- 2) Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- 3) Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- 4) Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with *Section 21, State Ownership of Proprietary Information*.

11. **REMEDIES**. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that the Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
12. **LIMITED LIABILITY**. The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the Contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.
13. **FORCE MAJEURE**. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
14. **INDEMNIFICATION**. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.
15. **INDEPENDENT CONTRACTOR**. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage

provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine “independent contractor” status, and shall monitor the work, relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

QUESTION		CONTRACTOR'S INITIALS	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?		
2.	Will the Contracting Agency be providing training to the independent contractor?		
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?		
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?		
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?		
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?		
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?		

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in **Attachment BB**, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior to approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

- A. **Insurance Coverage.** The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in **Attachment BB**, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

- 1) Final acceptance by the State of the completion of this Contract; or
- 2) Such time as the insurance is no longer required by the State under the terms of this Contract; whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

B. General Requirements.

- 1) Additional Insured: By endorsement to the general liability insurance policy, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- 2) Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- 3) Cross Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- 4) Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- 5) Policy Cancellation: Except for ten (10) days notice for non-payment of premiums, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this Section shall be sent by certified mail to the address shown on page one (1) of this contract.
- 6) Approved Insurer: Each insurance policy shall be:
  - a) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
  - b) Currently rated by A.M. Best as "A-VII" or better.

C. Evidence of Insurance.

Prior to the start of any work, Contractor must provide the following documents to the contracting State agency:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized by the insurer to bind coverage on its behalf. The State project/Contract number; description and Contract effective dates shall be noted on the certificate, and upon renewal of the policies listed, Contractor shall furnish the State with replacement certificates as described within *Section 16A, Insurance Coverage*.

**Mail all required insurance documents to the State Contracting Agency identified on Page one of the Contract.**

- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85), signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per *Section 16 B, General Requirements*.
  - 3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.
  - 4) Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.
17. **COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any State, county, city or federal license, authorization, waiver, permit qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.
  18. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
  19. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
  20. **ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.
  21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark, or copyright protection.
  22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.
  23. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. **FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:
- A. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt 67, Section 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
  - B. Contractor and its subcontracts shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted there under contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
  - C. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
- A. Any federal, State, county or local agency, legislature, commission, council or board;
  - B. Any federal, State, county or local legislator, commission member, council member, board member, or other elected official; or
  - C. Any officer or employee of any federal, State, county or local agency; legislature, commission, council or board.
26. **WARRANTIES.**
- A. General Warranty. Contractor warrants that all services, deliverables, and/or work products under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry, shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
  - B. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State.
27. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.
28. **NOTIFICATION OF UTILIZATION OF CURRENT OR FORMER STATE EMPLOYEES.** Contractor has disclosed to the State all persons that the Contractor will utilize to perform services under this Contract who are Current State Employees or Former State Employees. Contractor will not utilize any of its employees who are Current State Employees or Former State Employees to perform services under this Contract without first notifying the Contracting Agency of the identity of such persons and the services that each such person will perform, and receiving from the Contracting Agency approval for the use of such persons.
29. **ASSIGNMENT OF ANTITRUST CLAIMS.** Contractor irrevocably assigns to the State any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim for relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's obligations under this Contract to irrevocably assign to the State, as third party

beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

30. **GOVERNING LAW: JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.
31. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

SAMPLE

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

\_\_\_\_\_  
Independent Contractor's Signature                      Date                      Independent Contractor's Title

\_\_\_\_\_  
Signature                      Date                      Title

\_\_\_\_\_  
Signature                      Date                      Title

\_\_\_\_\_  
Signature                      Date                      Title

APPROVED BY BOARD OF EXAMINERS

\_\_\_\_\_  
Signature – Board of Examiners

On: \_\_\_\_\_  
Date

Approved as to form by:

On: \_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy Attorney General for Attorney General

# RFP 3221 Insurance Schedule

## **INDEMNIFICATION CLAUSE:**

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

## **INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$4,000,000
- Products – Completed Operations Aggregate \$4,000,000
- Personal and Advertising Injury \$2,000,000
- Each Occurrence \$2,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor."

2. **Automobile Liability - may be waived if contract does not involve use of motor vehicle.**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor."

**3. Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

**4. Technology E&O/Professional Liability**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$5,000,000
Annual Aggregate	\$5,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

**5. Network Security (Cyber) and Privacy Liability**  
**(May be combined with E&O policy above)**

Per Occurrence	\$5,000,000
Annual Aggregate	\$5,000,000

- a. This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information., direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties.
- b. The retroactive coverage date shall be no later than the effective date of this contract.
- c. Contractor shall maintain an extended reporting period for not less than two (2) years after termination of this contract.

**6. Fidelity Bond or Crime Insurance**

Bond or Policy Limit	\$1,000,000
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- a. The bond or policy shall be issued with limits of 50% of the contract value or \$50,000 - whichever amount is greater.
- b. The bond or policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- c. The bond or policy shall include coverage for third party fidelity and name the State of Nevada as loss payee.
- d. The bond or policy shall include coverage for extended theft and mysterious disappearance.
- e. The bond or policy shall not contain a condition requiring an arrest and conviction.
- f. Policies shall be endorsed to provide coverage for computer crime/fraud.

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
  2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **(State of Nevada Department Representative's Name & Address)**.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- All certificates required by this Contract shall be sent directly to **(State Department Representative's Name and Address)**. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**
- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

# Appendix G - New Jersey

## State of New Jersey Standard Terms and Conditions

1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**- Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.
2. **STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS** - The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- 2.1 **BUSINESS REGISTRATION** – Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.
- 2.2 **ANTI-DISCRIMINATION** - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.
- 2.3 **PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.
- 2.4 **AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.
- 2.5 **MACBRIDE PRINCIPLES** – The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- 2.6 **PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:
  - a. make or solicit a contribution in violation of the statute;
  - b. knowingly conceal or misrepresent a contribution given or received;
  - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;

## State of New Jersey Standard Terms and Conditions

- d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
- e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
- h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

**2.7 POLITICAL CONTRIBUTION DISCLOSURE** – The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.

**2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST** - The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

**2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE** - Pursuant to L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set

# State of New Jersey Standard Terms and Conditions

off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

- 2.10 COMPLIANCE - LAWS** - The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.
- 2.11 COMPLIANCE - STATE LAWS** - It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- 3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**
- 3.1 COMPLIANCE - CODES** – The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.
- 3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.
- 3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS** - N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:
- a) The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
  - b) The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
  - c) The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

# State of New Jersey Standard Terms and Conditions

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows;

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
  2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
  3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
  4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- 3.4 **BUILDING SERVICE** – Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.
- 3.5 **THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.
- 3.6 **SERVICE PERFORMANCE WITHIN U.S.** – Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b)(1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

- 3.7 **BUY AMERICAN** – Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

## 4. **INDEMNIFICATION AND INSURANCE**

- 4.1 **INDEMNIFICATION** - The contractor's liability to the State and its employees in third party suits shall be as follows:
- (a) Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.
  - (b) The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.
  - (c) In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

# State of New Jersey Standard Terms and Conditions

- 4.2 INSURANCE** - The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the State. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at:

ccau.certificate@treas.state.nj.us

The insurance to be provided by the contractor shall be as follows:

- a. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:  
  
\$1,000,000 BODILY INJURY, EACH OCCURRENCE  
\$1,000,000 DISEASE EACH EMPLOYEE  
\$1,000,000 DISEASE AGGREGATE LIMIT
- d. This \$1 million amount may have been raised by the RFP when deemed necessary by the Director.
- e. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17, et.seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

## **5. TERMS GOVERNING ALL CONTRACTS**

- 5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR** – The contractor's status shall be that of any independent contractor and not as an employee of the State.
- 5.2 CONTRACT AMOUNT** - The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.
- 5.3 CONTRACT TERM AND EXTENSION OPTION** - If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least thirty (30) days prior to the expiration date of the existing contract. The contractor shall have fifteen (15) calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.
- 5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK** – The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the

# State of New Jersey

## Standard Terms and Conditions

Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- (a) If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.
- (b) If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

**5.5 CHANGE IN LAW** – Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- (a) If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.
- (b) If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

**5.6 SUSPENSION OF WORK** - The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

**5.7 TERMINATION OF CONTRACT**

- a. For Convenience  
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than thirty (30) days written notice to the contractor.
- b. For Cause
  1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17: 12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.
  2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.
- c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

# State of New Jersey Standard Terms and Conditions

## 5.8 **SUBCONTRACTING OR ASSIGNMENT** –

- a. **Subcontracting**: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.
- b. **Assignment**: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

## 5.9 **NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE** - Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

## 5.10 **MERGERS, ACQUISITIONS** - If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

## 5.11 **PERFORMANCE GUARANTEE OF CONTRACTOR** - The contractor hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location.
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

## 5.12 **DELIVERY REQUIREMENTS** -

- a. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract.
- b. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice.
- c. Items delivered must be strictly in accordance with the contract.
- d. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

# State of New Jersey

## Standard Terms and Conditions

- 5.13 APPLICABLE LAW AND JURISDICTION** - This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.
- 5.14. CONTRACT AMENDMENT** – Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.
- 5.15 MAINTENANCE OF RECORDS** - The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the State, including the Comptroller, for audit and review.
- 5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)** - The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It shall advise the Attorney General of New Jersey:
  1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
  2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

## **6. TERMS RELATING TO PRICE AND PAYMENT**

- 6.1 PRICE FLUCTUATION DURING CONTRACT** - Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

- 6.2 TAX CHARGES** - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

## **6.3 PAYMENT TO VENDORS** -

- a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by

## State of New Jersey Standard Terms and Conditions

- the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price.
- b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized.
  - c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at [www.nj.gov/treasury/purchase/forms/Vendor\\_Timesheet.xls](http://www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls).
  - d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

**6.4 OPTIONAL PAYMENT METHOD: P-CARD** - The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

**6.5 NEW JERSEY PROMPT PAYMENT ACT** - The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

**6.6 AVAILABILITY OF FUNDS** – The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

<http://www.state.nj.us/treasury/purchase/forms.shtml>

# Appendix H - Pennsylvania

ATTACHMENT A

## TERMS AND CONDITIONS

1. Show Service Purchase Contract number on all invoices and correspondence relating to this contract. Address inquiries concerning the payment of invoices to the Comptroller.
2. The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service, and has accordingly registered with the Internal Revenue Service to make tax-free purchases under Registration [REDACTED]. No exemption certificates are required and none will be issued.
3. The Commonwealth is exempt from Pennsylvania Sales Tax. The Sales and Use Tax Regulations provide that exemption certificates are not required for sales made to government entities. Exemption Certificates will not be issued.
4. Contractor agrees to comply with all applicable laws and regulations of the Commonwealth in carrying out this contract.
5. Contractor, its agents and employees, shall act in an independent capacity and shall not act or be deemed to act as officers, employees or agents of the Commonwealth.
6. Send itemized invoices as directed on contract promptly upon service rendered. Don't include in one invoice items on more than one contract number. (Consider as one contract a consecutive series of service purchase contract forms bearing a single total and number.)
7. Questions concerning this contract should be directed to the Agency Procurement Officer. Any correspondence concerning invoices or the payment of bills should be directed to the "Bill To" address.
8. Regardless of provisions to the contrary found elsewhere in the provisions of this contract, the laws of the Commonwealth of Pennsylvania shall be used in the interpretation of this contract and shall prevail over the laws of any other state in the construction of this contract.
9. Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in this contract.
10. Performance of this contract is not assignable without prior written consent of the Commonwealth.
11. The Commonwealth may terminate this contract for its convenience if Commonwealth determines termination to be in its best interest. Contractor shall be paid for work completed.
12. The Commonwealth's obligations are contingent upon appropriation of funds for the contract purpose.
13. In carrying out this contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.
14. This contract and/or attachments constitutes the entire agreement between the parties.
15. In the event of conflict between any of these terms and conditions and any attachment hereto, these terms and conditions shall prevail.
16. Contractor agrees to report and deliver any abandoned or unclaimed property held by Contractor or its agents, subcontractors or assignees, as defined by and in accordance with the Disposition of Abandoned and Unclaimed Property Act (DAUPA), 72 P.S. §1301.1 *et seq.* A negative report must be filed if Contractor determines, after a records review, that there is no reportable unclaimed property. Instructions and assistance in filing the report are available from the Bureau of Unclaimed Property holder hotline at **1-800-379-3999** or via e-mail at [unclaimedpropertyreporting@patreasury.gov](mailto:unclaimedpropertyreporting@patreasury.gov). Additional information regarding the Pennsylvania Abandoned and Unclaimed Property Program is located at [www.patreasury.gov](http://www.patreasury.gov).

### **ASSIGNMENT OF ANTITRUST CLAIMS**

Vendor and the Commonwealth recognize that in actual economic practice, overcharges by vendor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this contract, and intending to be legally bound, vendor assigns to the Commonwealth all right, title and interest in and to any claims vendor now has or may hereafter acquire under state or federal antitrust laws relating to the goods or services which are the subject of this contract.

### **CONTRACTOR RESPONSIBILITY PROVISIONS**

1. Contractor certifies that it, its affiliates and subsidiaries are not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.
2. If Contractor enters into any subcontracts under this contract with subcontractors who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts.
3. The Contractor agrees that it shall be responsible for reimbursing the Commonwealth for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General relating to an investigation of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth which results in the suspension or debarment of the Contractor.

### **OFFSET PROVISION FOR COMMONWEALTH CONTRACTS**

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the Contractor or its subsidiaries that is owed to the Commonwealth and not being contested on appeal against any payments due the Contractor under this or any other contract with the Commonwealth.

### **CONTRACTOR INTEGRITY PROVISIONS**

1. Definitions
  - a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - b. Consent means written permission signed by a duly authorized officer or employe of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employes, and owners of more than 5 percent interest.
  - d. Financial Interest means:
    - (1) ownership of more than a 5 percent interest in any business; or

## NONDISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, physical ability, age or sex.

Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, physical ability, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, physical ability, age or sex.

3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor has delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that Contractor was not on notice of the third-party discrimination or made a good-faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Office of Administration, Bureau of Affirmative Action for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Affirmative Action.

8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract so that such provisions will be binding upon each subcontractor.

10. Contractor's obligations under this clause are limited to Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

### **THE AMERICANS WITH DISABILITIES ACT**

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. §35.101 *et seq.*, the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1 above.

### **SOCIALLY/ECONOMICALLY RESTRICTED BUSINESS UTILIZATION**

The Contractor must provide the Department of General Services, Bureau of Contract Administration and Business Development, with quarterly reports that indicate whether the Contractor utilized a Minority Business Enterprise, Women's Business Enterprise, or Socially/Economically Restricted Business for activities under this Contract during the quarter and list the names of and the amount paid to the Minority Business Enterprise, Women's Business Enterprise, or Socially/Economically Restricted Business utilized. The first such report shall be due on the 100th day after the starting date of this contract, and subsequent reports shall be due each 100th day thereafter.

### **NOTICE OF ELECTIONS CODE REPORTING REQUIREMENTS**

The Pennsylvania Election Code provides that any business entity which has been awarded a contract on a non-bid basis by the Commonwealth shall file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of each year. The Contractor may obtain a copy of the reporting form (DSEB-504) and other information regarding this requirement from the Department of State, Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, Pennsylvania 17120 or on the web at [www.dgsweb.state.pa.us/comod/campaignfinance.pdf](http://www.dgsweb.state.pa.us/comod/campaignfinance.pdf) or by phone at [REDACTED]

### **BUDGET IMPASSE**

If the Commonwealth has not enacted an annual General Fund budget, which has been passed by the General Assembly and signed by the Governor, on or before the start of the new fiscal year on July 1, the Commonwealth shall be considered to be in a budgetary impasse. Under such circumstances, Contractor shall continue to render services to Treasury through the budgetary impasse and will invoice Treasury for such services. Once the Commonwealth General Fund budget has been passed by the General Assembly

and signed by the Governor, Treasury will pay all outstanding invoices as soon as practically possible, but no later than 45 days. If there are no funds appropriate in the enacted General Fund budget to continue this Agreement, then the termination of this Agreement shall be effective, provided, however, Treasury shall pay for all services rendered during the impasse.

SPC T&C  
3-1-12

## CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the [Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#), or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the [Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#) or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no

bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
  - a. Approved in writing by the Commonwealth prior to its disclosure; or
  - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
  - c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - d. Necessary for purposes of Contractor's internal assessment and review; or
  - e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  - g. Otherwise required by law.
  
10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
  - a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - (1) Obtaining;
    - (2) Attempting to obtain; or
    - (3) Performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
  - a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
  - b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.

14. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.
15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
16. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.
  - a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
  - b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
  - c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
  - d. "Financial interest" means:
    - (1) Ownership of more than a five percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

- e. “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor’s Code of Conduct, Executive Order 1980-18](#), the *4 Pa. Code §7.153(b)*, shall apply.
- f. “Immediate family” means a spouse and any un-emancipated child.
- g. “Non-bid basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or Vendor.
- h. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

## CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, Vendor, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Commonwealth for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125

Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

## **NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

# Appendix I - Rhode Island

## Terms and Conditions

### *Integration*

The entire and integrated agreement between State and Vendor related to Services shall consist of this Agreement and its Exhibits, State's RFP, and Vendor's Bid Response. In the event of conflict among any of the preceding documents, such documents shall govern in the following order of precedence (1) this Agreement and Exhibits, (2) State's RFP, and (3) the Vendor Bid Response. The integrated agreement supersedes all prior negotiations, representations, statements and agreements, whether written or oral, regarding the Services.

### *Governing Law*

The Agreement shall be interpreted and construed under the laws of the State of Rhode Island without reference to its conflicts of laws principles.

### *Subcontractors*

No subcontracts or collateral agreements shall be permitted without the prior written consent of the Treasurer. Upon request, contractors must submit to the Treasurer a list of all subcontractors to be employed in the performance of any services or other contract arising from this RFP.

### *Data Security*

Failure of the vendor or any of its subcontractors to employ commercially reasonable measures in accordance with industry standards to protect against unauthorized access, use or disclosure of participant data held directly by the vendor, or such subcontractor (as the case may be), must agree to have no limitation of liability.

### *Limited Liability and Indemnity*

The State of Rhode Island will not enter into any limited liability clauses of any type.

The vendor agrees to indemnify, defend and hold harmless the State of Rhode Island, its directors, officers, employees and agents from any and all claims made including, but not limited to, claims for salaries, liability for tax withholding, workers' compensation, disability or miscellaneous employment benefits, whether based on tort, contract or other theories of recovery arising out of injury, disability, or death of the vendor's employees or independent contractors.

The vendor shall perform a background investigation on all contract employees working for the State of Rhode Island under this Agreement.

### *Restrictions on Gifts*

State ethics laws restrict gifts which may be given or received by employees and directors and requires certain individuals to disclose information concerning their activities with State government. Vendors are responsible to determine the applicability of these laws to their activities and to comply with the requirements. In addition, it is a felony offense to bribe or attempt to bribe a public official.

### *Non-Discrimination*

All proposals shall be considered on the basis of their merit in accordance with the criteria specified herein and shall not exclude any person, firm, or other entity, from consideration on the grounds of sex, race, color, or national origin. Likewise, it is required that all Vendors have established non-discrimination policies, including policies, which prohibit discrimination in the selection of

subcontractors. Vendors shall represent that they are committed to maintaining a work environment free from discrimination on the basis of race, color, religion, national origin, pregnancy, gender identity, sexual orientation, marital/civil union status, ancestry, place of birth, age, citizenship status, veteran status, political affiliation, genetic information or disability, as defined and required by state and federal laws. Additionally, that they prohibit retaliation against individuals who oppose such discrimination and harassment or who participate in an equal opportunity investigation.

#### *State Code of Ethics*

The State of Rhode Island and Treasurer are committed to maintaining the highest standards of ethics. In accordance therewith, all Vendor's should be familiar with and abide by the State Code of Ethics, as set forth in Rhode Island General Laws §36-14-1 *et. seq.*, and any additional regulations as provided on the State Ethics Commission website <http://www.ethics.ri.gov/code/>.

#### *Confidentiality Requirements*

The staff members that are assigned by the Vendor – be they employees, sub-contractors, or employees of sub-contractors – may be required to sign a non-disclosure statement.

The Treasurer shall treat all documents submitted by a Vendor in connection with this RFP as public records after awarding the contract pursuant to this RFP, unless the Vendor properly requests that documents submitted by it be treated as non-public at the time of submission. The release of public records is governed by Rhode Island General Laws §38-2-1 *et seq.* (“APRA”). Vendors are encouraged to familiarize themselves with this law before submitting a proposal.

Any request by Vendors that records submitted by them be exempt from being considered public record must be included in the transmittal letter with the Vendors' proposal. In addition, Vendors must enumerate the specific grounds upon which the APRA or other applicable law supports treatment of the documents as exempt from being considered a public record, and further, the factual basis, if any, upon which they rely in asserting that the documents should be exempt. Any request for treating records submitted as being exempt must also include: the name, address, and telephone number of the person authorized by the Vendor to respond to any inquiries by the Treasurer and/or SIC with regard to such an assertion.

Any proposals submitted which contain non-public records must be conspicuously marked on the outside as containing non-public information, and each page upon which non-public information appears must be conspicuously marked as containing non-public information. Identification of the entire proposal as being non-public records may be deemed non-responsive and may disqualify the Vendor.

If the Vendor designates any portion of the proposal as being a non-public record, the Vendor must submit one (1) copy of the proposal from which the non-public record is deleted or redacted. This copy shall be submitted in addition to the number of copies requested in Section V of this RFP. The non-public records must be excised in such a way as to allow the public to determine the general nature of the information redacted and retain as much of the proposal as possible.

The Treasurer will treat the records marked as non-public as being confidential information to the extent such information is determined confidential under the APRA or other applicable law or by a court of competent jurisdiction. The Vendor's failure to request records submitted as being non-

public records will be deemed as a waiver of any right to confidentiality, which the Vendor may have had.

By submitting a proposal, Vendor agrees that the Treasurer SIC may reproduce Vendor's proposal for purposes of facilitating the evaluation of the proposal or to respond to requests for public records. Vendor consents to such reproduction by submitting a proposal and further warrants that such reproduction does not violate its rights or the rights of any third parties. The Treasurer and/or SIC shall have the right to use ideas or adaptations of ideas that are presented in proposals.

*Placement Agent Disclosure Certificate*

It is the Treasurer's policy to prohibit the use of placement agents with respect to work performed for the Treasurer and/or SIC, and to require disclosure regarding vendors use of placement agents in other aspects of their business.

*Code of Conduct Investor Pledge*

The Treasurer has a strict policy with regard to political contributions and the adherence to the rules and laws drafted by the Securities and Exchange Commission (SEC), including the Investment Advisers Act of 1940 CFR Part 275, Rule 206(4)-5 and the Municipal Securities Rulemaking Board (MSRB), including Rule G-37. The Vendor will be required to comply with said policy and to complete and sign an appropriate disclosure statement.

*Transparency in Government Agreement*

The Treasurer and the SIC recently adopted policies addressing transparency in government. The transparency in government agreement can be found at <http://investments.treasury.ri.gov/investment-philosophy/>.

The placement agent disclosure certificate, the code of conduct investor pledge can be referenced at: <http://data.treasury.ri.gov/dataset/investment-manager-and-consultant-policies-and-pledges>.

All forms will be required to be signed upon engagement, where applicable.

# Appendix J

## Reporting Requirements

### I. Account and Asset Reports

#### A. Content of reports:

1. Number of new accounts opened in the reporting period by :
  - a. Eligibility criteria (*i.e.*, SSI, SSDI or disability certification);
  - b. Disability IRS form 5498-QA diagnosis code;
  - c. State specific counties (including out-of-state as one “county”); and
  - d. Method of enrollment (on-line vs. paper), with percentages.
2. Number of accounts closed in the reporting period by:
  - a. Eligibility criteria (*i.e.*, SSI, SSDI or disability certification); and
  - b. Disability IRS form 5498-QA diagnosis code.
3. Total number of funded accounts as of the close of the reporting period by:
  - a. Eligibility criteria (*i.e.*, SSI, SSDI or disability certification);
  - b. Disability IRS form 5498-QA diagnosis code; and
  - c. State specific counties (including out-of-state as one “county”).
4. Total number of open but unfunded accounts as of the close of the reporting period by:
  - a. Eligibility criteria (*i.e.*, SSI, SSDI or disability certification);
  - b. Disability IRS form 5498-QA diagnosis code; and
  - c. State specific counties (including out-of-state as one “county”).
5. Amount of new contributions received in the reporting period by:
  - a. Eligibility criteria (*i.e.*, SSI, SSDI or disability certification);
  - b. Disability IRS form 5498-QA diagnosis code;
  - c. Method of contribution (e.g. check, ACH, payroll deduction gift), with percentages; and
  - d. State specific counties (including out-of-state as one “county”).
6. Number and amount of self-reported qualified withdrawals taken in the reporting period by:
  - a. Eligibility criteria (*i.e.*, SSI, SSDI or disability certification); and
  - b. Disability IRS form 5498-QA diagnosis code.
7. Number and amount of self-reported non-qualified withdrawals taken in the reporting period by:
  - a. Eligibility criteria (*i.e.*, SSI, SSDI or disability certification); and
  - b. Disability IRS form 5498-QA diagnosis code.
8. Total asset under management as of the close of the reporting period by:
  - a. Eligibility criteria (*i.e.*, SSI, SSDI or disability certification);
  - b. Disability IRS form 5498-QA diagnosis code; and
  - c. State specific counties (including out-of-state as one “county”).
9. Number and amount of rollovers in the reporting period by the plan from or to which they rolled.
10. Average account size.
11. Monthly average for contributions received by ACH.

12. Account Owner/Beneficiary demographics by:
  - a. Age;
  - b. How you heard about the Program; and
  - c. What information resource was the most helpful in making the decision to open an account.
13. The Individual Account Detail Report shall contain the following individual fields:
  - a. Account number;
  - b. Account open date;
  - c. Authorized signatory first name;
  - d. Authorized signatory last name;
  - e. Authorized signatory SSN;
  - f. Authorized signatory date of birth;
  - g. Authorized signatory mailing address Line 1;
  - h. Authorized signatory mailing address Line 2;
  - i. Authorized signatory city;
  - j. Authorized signatory state;
  - k. Authorized signatory zip;
  - l. Authorized signatory daytime phone;
  - m. Authorized signatory evening phone;
  - n. Authorized signatory e-mail address;
  - o. Beneficiary first name;
  - p. Beneficiary last name;
  - q. Beneficiary SSN;
  - r. Beneficiary date of birth;
  - s. Beneficiary age;
  - t. Beneficiary mailing address 1;
  - u. Beneficiary mailing address 2;
  - v. Beneficiary city;
  - w. Beneficiary state;
  - x. Beneficiary zip;
  - y. Beneficiary recipient eligibility certification date;
  - z. Total available principal;
  - aa. Total available earnings;
  - bb. Total account value;
  - cc. Last contribution date;
  - dd. Last withdrawal date;
  - ee. Last withdrawal type (qualified or non-qualified);
  - ff. Rollover in flag (Y/N);
  - gg. Automatic investment plan flag (Y/N);
  - hh. Web registered flag (Y/N);
  - ii. Last Beneficiary login date;
  - jj. Last Beneficiary contact date;
  - kk. Stopmail flag (Y/N);
  - ll. Stopmail date;
  - mm. Contribution total by year (running yearly total); and
  - nn. Withdrawal total by year (running yearly total).

- B. Frequency of reports:
  - 1. All reports, except the Individual Account Detail Report:
    - a. Daily;
    - b. Monthly;
    - c. Calendar quarter;
    - d. Calendar year;
    - e. Fiscal year (July1 – June 30); and
    - f. Since inception.
  - 2. Individual Account Detail Report: quarterly

## **II. Investment Report**

- A. Fund balances by portfolio, including percentage of whole; and
- B. Contributions by portfolio, including percentage of whole.

## **III. PHONE E-MAIL AND CORRESPONDENCE**

- A. Content of reports
  - 1. Call statistics by for the Members in the aggregate and separately for each Member. Including: Calls received, calls answered, calls abandon, average speed of answer, maximum wait time, average wait time, average talk time, average hold time, and percent abandon.
  - 2. Statistic for emails and correspondence (separately) received for the Members in the aggregate and separately for each Member to include:
    - a. Number received
    - b. Number responded to within: the same day, 24 hours 48 hours, longer than 48 hours
    - c. Number referred to Member
  - 3. Summary of client feedback including complaints or requests for Program changes.
  - 4. Warm-lead data on prospects that requested information via phone or email including:
    - a. Name
    - b. Address (including city, state zip)
    - c. Email address
    - d. Phone number
    - e. Date of contact
    - f. Type of contact (call, email, mail, etc.)
- B. Frequency of reports:
  - 3. Call statistics: daily reporting in hourly increments
  - 4. Email and correspondence:
    - a. Weekly;

- b. Monthly;
- c. Calendar quarter;
- d. Calendar year; and
- e. Fiscal year (July 1 – June 30).

**IV. MY ACCOUNT WEBSITE**

- A. Number of accounts registered for online access.
- B. Number of accounts registered for electronic communication.
- C. Number of online withdrawals by:
  - 1. Qualified; and
  - 2. Non-qualified.
- D. Frequency of reports:
  - 1. End of month;
  - 2. End of calendar quarter;
  - 3. End of calendar year; and
  - 4. End of fiscal year (July 1-June 30).

**V. FRONT-END WEBSITE**

- A. Full access to Google Analytics, or a similar tool, for all pages of the website.

Appendix K - Cost Proposal Spreadsheet

**1. Investment Options (please add additional tables as needed)**

Total assets of all Consortium Member States' ABLE programs	Underlying fund fee	Program management fee	Administrator basis point fee	Total fees per breakpoint	Specified dollar fee per account (specify the frequency of the fee)
\$0.00 to \$_____					
\$_____ to \$_____					
\$_____ to \$_____					
\$_____ to \$_____					
\$_____ to \$_____					

2. Service/Transaction Fees	Price
Permitting withdrawals via debit card	
Permitting contributions via debit card	
Monthly rather than quarterly account statements	
Contribution checks returned for insufficient funds	
Contributions made by ACH which fail	
Any other services/transactions for which you will charge (please add additional fields below as needed)	
i.	
ii.	
iii.	

**3. E-Delivery**

Total assets of all Consortium Member States' ABLE programs	Reduction in basis point fee	Specified fee reduction per account (specify the frequency of the fee)
\$0.00 to \$_____	-	-
\$_____ to \$_____	-	-
\$_____ to \$_____	-	-
\$_____ to \$_____	-	-
\$_____ to \$_____	-	-

**4. Customer Service**

Total assets of all Consortium Member States' ABLE programs	Reduction in basis point fee	Specified fee reduction per account (specify the frequency of the fee)
\$0.00 to \$ _____	-	-
\$ _____ to \$ _____	-	-
\$ _____ to \$ _____	-	-
\$ _____ to \$ _____	-	-
\$ _____ to \$ _____	-	-

**5. Outreach Material Support**

Total assets of all Consortium Member States' ABLE programs	Reduction in basis point fee	Specified fee reduction per account (specify the frequency of the fee)
\$0.00 to \$ _____	-	-
\$ _____ to \$ _____	-	-
\$ _____ to \$ _____	-	-
\$ _____ to \$ _____	-	-
\$ _____ to \$ _____	-	-

**6. Master/Sub-Accounts**

Total assets of all Consortium Member States' ABLE programs	Additional basis point fee	Specified dollar fee per account (specify the frequency of the fee)
\$0.00 to \$ _____		
\$ _____ to \$ _____		
\$ _____ to \$ _____		
\$ _____ to \$ _____		
\$ _____ to \$ _____		

## Appendix L

### ILLINOIS STATE TREASURER CERTIFICATIONS

\_\_\_\_\_ (“CONTRACTOR”) makes the following certifications:

#### **1.0 ANTI-BRIBERY.**

CONTRACTOR certifies that it is not barred from being awarded a contract or subcontract under Section 50-5 of the Illinois Procurement Code (30 ILCS 500/50-5). Section 50-5 prohibits a contractor from entering into a contract with a State agency if the contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or if the contractor has made an admission of guilt of such conduct with is a matter of record. The contractor further acknowledges that the chief procurement officer may declare the related contract void if this certification is false.

#### **2.0 BID-RIGGING/BID-ROTATING.**

CONTRACTOR certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961 (720 ILCS 5/33E-3, 33E-4).

#### **3.0 DRUG FREE WORKPLACE.**

This certification is required by Section 3 of the Drug Free Workplace Act (30 ILCS 580/3). The Drug Free Workplace Act, effective January 1, 1992, requires that CONTRACTOR shall not be considered for the purposes of being awarded a contract for the procurement of any services from the State unless CONTRACTOR has certified to the State that CONTRACTOR will provide a drug free workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract and debarment of contracting opportunities with the State for at least one (1) year but not more than five (5) years.

CONTRACTOR certifies and agrees that it will provide a drug free workplace by:

- a. Publishing a statement:
  - i. Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the grantee’s or contractor’s workplace.
  - ii. Specifying the actions that will be taken against employees for violation of such prohibition.
  - iii. Notifying the employee that, as a condition of employment on such contract or grant, the employee will:
    - a. abide by the terms of the statement; and
    - b. notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- b. Establishing a drug free awareness program to inform employees about:
  - i. the dangers of drug abuse in the workplace;
  - ii. CONTRACTOR’s policy of maintaining a drug free workplace;

- iii. any available drug counseling, rehabilitation, and employee assistance programs; and
- iv. the penalties that may be imposed upon an employee for drug violations.
- c. Providing a copy of the statement required by Section (a) to each employee engaging in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- d. Notifying the Treasurer's Office within ten (10) days after receiving notice under part (b) of paragraph (iii) of Section (a) above from an employee or otherwise receiving actual notice of such conviction.
- e. Imposing a sanction on, or requiring the satisfactory participation in drug abuse assistance or rehabilitation program by, an employee who is so convicted, as required by Section 5 of the Drug Free Workplace Act.
- f. Assisting employees in selecting a course of action in the event of drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
- g. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

#### **4.0 U.S. EXPORT ACT.**

CONTRACTOR certifies that neither CONTRACTOR nor any substantial-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 (50 U.S.C.A. App. § 2401 et seq.) or the regulations of the U.S. Department of Commerce promulgated under that Act.

#### **5.0 NON-DISCRIMINATION.**

CONTRACTOR certifies that it is in compliance with the State and Federal Constitutions, the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules that prohibit unlawful discrimination in performance of this Agreement and all other activities, including employment and other contracts. As a condition of receiving the Agreement, CONTRACTOR represents or certifies that services, programs and activities provided under the Agreement are and will continue to be in compliance with State and Federal Constitutions, the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, and all applicable laws that prohibit unlawful discrimination.

#### **6.0 AMERICANS WITH DISABILITIES ACT.**

CONTRACTOR certifies that it is in compliance with the Americans with Disabilities Act ("ADA") (42 U.S.C. 12101 et seq.) and the regulations thereunder (28 CFR 35.130) prohibit discrimination against persons with disabilities by the Treasurer, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving the Agreement, CONTRACTOR represents or certifies that services, programs and activities provided under the Agreement are and will continue to be in compliance with the ADA.

#### **7.0 ILLINOIS HUMAN RIGHTS ACT.**

CONTRACTOR certifies that it is presently in compliance with all of the terms, conditions and provisions of Section 5/2-105 of the Illinois Human Rights Act (775 ILCS 5/2-105), together with all rules and regulations promulgated and adopted pursuant thereto.

## **8.0 FELONY.**

CONTRACTOR certifies that it has not been barred from being awarded a contract under Section 50-10 of the Illinois Procurement Code (30 ILCS 500/50-10). Section 50-10 prohibits a contractor from entering into a contract with a State agency if the contractor has been convicted of a felony and 5 years have not passed from the completion of the sentence for that felony. The contractor further acknowledges that the chief procurement officer may declare the related contract void if this certification is false.

## **9.0 FORMER EMPLOYMENT.**

CONTRACTOR has informed the Treasurer's Office in writing if CONTRACTOR was formerly employed by the Treasurer's Office and has received an early retirement incentive under Section 14-108.3 or 16-133.3 of the Illinois Pension Code (30 ILCS 105/15a).

## **10.0 INDUCEMENT.**

CONTRACTOR has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has CONTRACTOR accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).

## **11.0 REVOLVING DOOR PROHIBITION.**

CONTRACTOR certifies that neither it nor its employees and agents are in violation of section 50-30 of the Illinois Procurement Code (30 ILCS 500/50-30). Section 50-30 prohibits for a period of (2) years after terminating an affected position certain State employees and their designees from engaging in any procurement activity relating to the State agency most recently employing them for a specified period of time.

## **12.0 REPORTING ANTICOMPETITIVE PRACTICES.**

CONTRACTOR shall report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anticompetitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, /50-45, /50-50).

## **13.0 DISCRIMINATORY CLUB.**

CONTRACTOR agrees not to pay any dues or fees on behalf of its employees or agents or subsidize or otherwise reimburse them for payments of any dues or fees to a discriminating club as prohibited by Section 2 of the Discriminatory Club Act (775 ILCS 25/2).

## **14.0 TAXPAYER IDENTIFICATION NUMBER AND LEGAL STATUS OF CONTRACTOR.**

CONTRACTOR shall be in compliance with applicable tax requirements and shall be current payment of such taxes. Under penalty of perjury, CONTRACTOR certifies that # \_\_\_\_\_ is its correct Taxpayer Identification Number and that it is doing business as a (please check one):

Individual  
 Sole Proprietor  
 Partnership/Legal Corporation  
 Tax Exempt  
 Corporation providing or billing  
     medical and/or health care services  
 Corporation NOT providing or billing  
     medical and/or health care services  
 Other: \_\_\_\_\_

Government Entity  
 Nonresident alien  
 Estate or trust  
 Pharmacy (Non-Corp.)  
 Pharmacy/Funeral Home/Cemetery  
     (Corp.)  
 Limited Liability Company (select  
     applicable tax classification.)  
 C = corporation  
 P = partnership

**15.0 LICENSE; AUTHORIZED BIDDER OR OFFEROR**

CONTRACTOR, directly or through its employees, shall have and maintain any license required by this Agreement. CONTRACTOR further certifies that it is a legal entity authorized to do business in Illinois prior to the submission of the bid, offer, or proposal pursuant to section 20-43 of the Illinois Procurement Code (30 ILCS 500/20-43).

**16.0 APPROPRIATION.**

This Agreement is subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation for payments under the terms of the contract.

**17.0 RECORDS RETENTION; RIGHT TO AUDIT.**

CONTRACTOR agrees to maintain books and records related to the performance of the contract and necessary to support amounts charged to the State under the contract for a minimum of three years from the last action on the contract or after termination of the Agreement, whichever is longer. Contractor further agrees to cooperate fully with any audit and to make the books and records available for review and audit by the Auditor General, chief procurement officers, internal auditor and the Treasurer; CONTRACTOR agrees to cooperate fully with any audit conducted by the Auditor General or the Treasurer and to provide full access to all relevant materials. The three-(3)-year period shall be extended for the duration of any audit in progress during the term. Failure to maintain the books, records and supporting documents required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

**18.0 CONFLICTS OF INTEREST.**

CONTRACTOR has disclosed, and agrees that it is under a continuing obligation to disclose, to the Treasurer financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest that would prohibit CONTRACTOR from entering into or performing the Agreement. Conflicts of interest include, but are not limited to, conflicts under Section 1400.5020 of the Treasurer’s Procurement Rules (44 Ill. Adm. Code 1400.5020) and Sections 50-13, 50-20, and 50-35 of the Illinois Procurement Code (30 ILCS 500/50).

## **19.0 LATE PAYMENTS.**

Late payment charges, if any, shall not exceed the formula established in the Illinois Prompt Payment Act (30 ILCS 540/1) and the Illinois Administrative Code (74 Ill. Adm. Code 900).

## **20.0 LIABILITY.**

The State's liability for damages is expressly limited by and subject to the provisions of the Illinois Court of Claims Act (705 ILCS 505/1) and to the availability of suitable appropriations.

## **21.0 DEBT DELINQUENCY.**

CONTRACTOR certifies that it, or any affiliate, is not barred from being awarded a contract or subcontract under section 50-11 of the Illinois Procurement Code (30 ILCS 500/50-11). Section 50-11 prohibits a contractor from entering into a contract with the Treasurer's Office if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. CONTRACTOR further acknowledges that the Treasurer's Office may declare the Agreement void if this certification is false or if CONTRACTOR or any affiliate is determined to be delinquent in payment of any debt during the term of the Agreement.

## **22.0 EDUCATIONAL LOAN DEFAULT.**

CONTRACTOR certifies that it is not barred from being awarded a contract under the Educational Loan Default Act (5 ILCS 385). Section 3 of the Educational Loan Default Act prohibits an individual from entering into a contract with the Treasurer's Office if that individual is in default of an educational loan. CONTRACTOR further acknowledges that the Treasurer's Office may declare the Agreement void if this certification is false or if CONTRACTOR is determined to be in default of an educational loan during the term of the Agreement.

## **23.0 FORCE MAJEURE.**

Failure by either party to perform its duties and obligations shall be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.

## **24.0 ANTITRUST ASSIGNMENT.**

CONTRACTOR hereby assigns, sells and transfers to the State of Illinois all right, title and interest in and to any claims and causes of action arising under antitrust laws of Illinois or the United States relating to the subject matter of the Agreement.

## **25.0 PROHIBITION OF GOODS FROM FORCED LABOR.**

CONTRACTOR certifies that it is not barred from being awarded a contract under the State Prohibition of Goods from Forced Labor Act (30 ILCS 583). Section 10 of the State Prohibition of Goods from Forced Labor Act prohibits a contractor from entering into a contract with the Treasurer's

Office if that contractor knew that the foreign-made equipment, materials, or supplies furnished to the State were produced in whole or part by forced labor, convict labor, or indentured labor under penal sanction. CONTRACTOR further acknowledges that the Treasurer's Office may declare the Agreement void if this certification is false or if CONTRACTOR is determined to have known that the foreign-made equipment, materials, or supplies furnished to the State during the term of the Agreement were produced in whole or part by forced labor, convict labor, or indentured labor under penal sanction.

#### **26.0 PROHIBITION OF GOODS FROM CHILD LABOR.**

CONTRACTOR certifies in accordance with Public Act 94-0264 that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12.

#### **27.0 SARBANES-OXLEY ACT AND ILLINOIS SECURITIES LAW**

CONTRACTOR certifies that it is not barred from being awarded a contract or subcontract under section 50-10.5 of the Illinois Procurement Code (30 ILCS 500). Section 50-10.5, amongst other things, prohibits a contractor from bidding or entering into a contract or subcontract with the Treasurer's Office if the contractor or any officer, director, partner, or other managerial agent of the contractor has been convicted in the last 5 years of a felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 or if the contractor is in violation of Subsection (e). CONTRACTOR further acknowledges that the Treasurer's Office may declare the agreement void if this certification is false or if CONTRACTOR is determined to have been convicted of a felony under the Illinois Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 during the term of the agreement.

#### **28.0 DISPUTES.**

Any claim against the State arising out of this Agreement must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The State shall not enter into binding arbitration to resolve any agreement dispute. The State of Illinois does not waive sovereign immunity by entering into this Agreement. Any provision containing a citation to an Illinois statute (cited "ILCS") may not contain the complete statutory language. The official text, which is incorporated by reference, may be found in the appropriate chapter and section of the Illinois Compiled Statutes. An unofficial version may be viewed at [www.ilga.gov](http://www.ilga.gov).

#### **29.0 THIRD-PARTY PAYMENTS.**

CONTRACTOR certifies that no fee was paid to a third-party in expectation of being awarded a contract by the Treasurer.

#### **30.0 MOST FAVORABLE TERMS.**

If more favorable terms are granted by the CONTRACTOR to any similar governmental agency in any state in a contemporaneous agreement let under the same or similar financial terms and

circumstances for comparable supplies or services, the more favorable terms will be applicable under the Agreement between the Treasurer's Office and the CONTRACTOR.

### **31.0 BOARD OF ELECTIONS REGISTRATION**

\_\_\_\_\_ The CONTRACTOR certifies that they are not required to register as a business entity with the State Board of Elections pursuant to the Illinois Procurement Code (30 ILCS 500/20-160). Further, the CONTRACTOR acknowledges that all contracts or subcontracts between State agencies and a business entity that do not comply with this Section shall be voidable under Section 50-60 of the Illinois Procurement Code (30 ILCS 500/50-60).

*(or)*

\_\_\_\_\_ The CONTRACTOR certifies that they have registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration pursuant to the Illinois Procurement Code (30 ILCS 500/20-160). Further, the CONTRACTOR acknowledges that all contracts or subcontracts between State agencies and a business entity that do not comply with this Section shall be voidable under Section 50-60 of the Illinois Procurement Code (30 ILCS 500/50-60).

### **32.0 COLLECTION AND REMITTANCE OF ILLINOIS USE TAX**

The CONTRACTOR certifies that it is not barred from being awarded a contract under section 50-12 of the Illinois Procurement Code (30 ILCS 500/50-12). Section 50-12 prohibits a contractor from entering into a contract or subcontract with a State agency if the CONTRACTOR or affiliate has failed to collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The CONTRACTOR further acknowledges that the contract or subcontract may be voided if this certification is false.

### **33.0 ENVIRONMENTAL PROTECTION ACT VIOLATIONS**

The CONTRACTOR certifies that it is not barred from being awarded a contract or subcontract under section 50-14 of the Illinois Procurement Code (30 ILCS 500/50-14). Section 50-14 prohibits a CONTRACTOR from entering into a contract or subcontract with a State agency if the CONTRACTOR has been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last (5) years. The CONTRACTOR further acknowledges that the contracting State agency may declare the related contract or subcontract void if this certification is false.

### **34.0 LEAD POISONING PREVENTION ACT VIOLATIONS**

The CONTRACTOR certifies that it is not barred from entering into a contract or subcontract under section 50-14.5 of the Illinois Procurement Code (30 ILCS 500/50-14.5). Section 50-14.5 prohibits a CONTRACTOR from entering into a contract or subcontract with the State of Illinois or a State agency if the CONTRACTOR, while the owner of a residential building, committed a willful or knowing violation of the Lead Poisoning Prevention Act. The CONTRACTOR further acknowledges that the Treasurer may declare the related contract or subcontract void if this certification is false.

### **35.0 BOND ISSUANCES**

The CONTRACTOR certifies that it is not barred from being awarded a contract or subcontract under section 50-21 of the Illinois Procurement Code (30 ILCS 500/50-21). Section 50-21 prohibits State agencies from entering into contracts or subcontracts with respect to the issuances of bonds or other securities by the State or a State agency with any entity that uses an “independent consultant” as defined in section 50-21.

### **36.0 POLITICAL CONTRIBUTIONS**

The CONTRACTOR certifies that it is not barred from being awarded a contract or subcontract under section 50-37 of the Illinois Procurement Code (30 ILCS 500/50-37). Section 50-37 prohibits business entities whose contracts with State agencies, in the aggregate, annually total more than \$50,000, or whose aggregate pending bids and proposals on State contracts total more than \$50,000, and any affiliated entities or affiliated persons of such business entity, from making any contributions to any political committee established to promote the candidacy of the office holder responsible for awarding the contract on which the business entity has submitted a bid or proposal during the period beginning on the date the invitation for bids or request for proposals are issued and ending on the day after the date the contract is awarded.

### **37.0 LOBBYING RESTRICTIONS**

The CONTRACTOR certifies that it is not barred from being awarded a contract or subcontract under section 50-38 of the Illinois Procurement Code (30 ILCS 500/50-38). Section 50-38 prohibits a CONTRACTOR from billing the State for any lobbying costs, fees, compensation, reimbursements, or other remuneration provided to any lobbyist who assisted the CONTRACTOR in obtaining the contract or subcontract.

### **38.0 DISCLOSURE OF BUSINESS OPERATIONS WITH IRAN (30 ILCS 500/50-36)**

Each bid, offer, or proposal submitted for a State contract, other than a small purchase defined in Section 20-20 [of the Illinois Procurement Code], shall include a disclosure of whether or not the bidder, offeror, or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, offer, or proposal had business operations that involved contracts with or provision of supplies or services to the Government of Iran, companies in which the Government of Iran has any direct or indirect equity share, consortiums or projects commissioned by the Government of Iran and:

(1) more than 10% of the company’s revenues produced in or assets located in Iran involve oil-related activities or mineral-extraction activities; less than 75% of the company’s revenues produced in or assets located in Iran involve contracts with or provision of oil-related or mineral – extraction products or services to the Government of Iran or a project or consortium created exclusively by that Government; and the company has failed to take substantial action; or

(2) the company has, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each that in the aggregate equals or exceeds \$20 million in any 12- month period that directly or significantly contributes to the enhancement of Iran’s ability to develop petroleum resources of Iran.

You must check one of the following items and if item 2 is checked you must also make the necessary disclosure:

\_\_\_ There are no business operations that must be disclosed to comply with the above cited law.

\_\_\_ The following business operations are disclosed to comply with the above cited law:

\_\_\_\_\_

CONTRACTOR

By:

\_\_\_\_\_

Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

DISCLOSURES

FINANCIAL INTEREST AND POTENTIAL CONFLICTS OF INTEREST  
(Disclosure Form A)

The Treasurer’s Procurement Regulations (44 Ill. Adm. Code 1400.5035) require that contractors/offers desiring to enter into certain contracts with the State of Illinois must disclose the financial and potential conflicts of interest information as specified below.

Contractor/offeror shall disclose the financial interest and potential conflicts of interest information identified in Sections 1 and 2 below as a condition of receiving an award or contract. Submit this information along with your bid, proposal or offer.

This requirement applies to contracts with an annual value exceeding \$10,000.

A publicly traded entity may submit its 10K disclosure in satisfaction of the disclosure requirements set forth in both Sections 1 and 2 below.

Sec. 1. Disclosure of Financial Interest in the Contractor/Offeror

- a. If any individuals have one of the following financial interests in the contractor/offeror (or its parent), please check all that apply and show their name and address:

Ownership exceeding 5% ( )
Ownership value exceeding \$106,447.20 ( )
Distributive Income Share exceeding 5% ( )
Distributive Income Share exceeding \$106,447.20 ( )

Name: \_\_\_\_\_

Address: \_\_\_\_\_
\_\_\_\_\_

- b. For each individual named above, show the type of ownership/distributable income share: sole proprietorship \_\_\_\_\_ stock \_\_\_\_\_ partnership \_\_\_\_\_ other (explain)

\_\_\_\_\_.

- c. For each individual named above, show the dollar value or proportionate share of the ownership interest in the contractor/offeror (or its parent) as follows:

If the proportionate share of the named individual(s) in the ownership of the contractor/offeror (or its parent) is 5% or less, and if the value of the ownership interest of the named individual(s) is \$106,447.20 or less, check here ( )

If the proportionate share of ownership exceeds 5% or the value of the ownership interest exceeds \$106,447.20, show either.

The percent of ownership \_\_\_\_\_%

or

The value of the ownership interest \$ \_\_\_\_\_

Sec. 2. Disclosure of Potential Conflicts of Interest. For each of the individuals having the level of financial interest identified in Section 1 above, check “Yes” or “No” to indicate which, if any, of the following potential conflicts of interest relationships apply. If “Yes,” please describe (use space under applicable section to explain your answers – attach additional pages as necessary).

- |    |  |              |             |
|----|--|--------------|-------------|
| a. | State employment, currently or in the previous 3 years, including contractual employment of services   | Yes<br>_____ | No<br>_____ |
| b. | State employment for spouse, father, mother, son, or daughter, including contractual employment for services in the previous 2 years.  | Yes<br>_____ | No<br>_____ |
| c. | Elective status; the holding of elective office of the State of Illinois, the government of the United States, any unit of local government authorized by the Constitution of the State of Illinois, or the statutes of the State of Illinois currently or in the previous 3 years.  | Yes<br>_____ | No<br>_____ |
| d. | Relationship to anyone holding elective office currently or in the previous 2 years; spouse, father, mother, son, or daughter.   | Yes<br>_____ | No<br>_____ |
| e. | Appointive office; the holding of any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that office currently or in the previous 3 years. | Yes<br>_____ | No<br>_____ |
| f. | Relationship to anyone holding appointive office currently or in the previous 2 years; spouse, father, mother, son, or daughter.   | Yes<br>_____ | No<br>_____ |
| g. | Employment, currently or in the previous 3 years, as or by any registered lobbyist of the State government.  | Yes<br>_____ | No<br>_____ |
| h. | Relationship to anyone who is or was a registered lobbyist in the previous 2 years; spouse, father, mother, son, or daughter.  | Yes<br>_____ | No<br>_____ |
| i. | Compensated employment, currently or in the previous 3 years, by any registered election or re-election committee registered with the Secretary of   | Yes<br>_____ | No<br>_____ |

State or any county clerk in the State of Illinois, or any political action committee with either the Secretary of State or the Federal Board of Elections.

- |    |  |              |             |
|----|--|--------------|-------------|
| j. | Relationship to anyone; spouse, father, mother, son, or daughter, who is or was a compensated employee in the last 2 years of any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections. | Yes<br>_____ | No<br>_____ |
|----|--|--------------|-------------|

This disclosure is submitted on behalf of

\_\_\_\_\_  
(Name of Contractor/Offeror)

Official authorized to sign on behalf of contractor/offeror:

Name (printed) \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

DISCLOSURES  
OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION  
(Disclosure Form B)

The Treasurer's Procurement Regulations (44 Ill. Adm. Code 1400.5035) require that contractors/offersors desiring to enter into certain contracts with the State of Illinois must disclose the information as specified below.

Contractor/offersor shall disclose the information identified below as a condition of receiving an award or contract.

This requirement is applicable to only those contracts with an annual value exceeding \$10,000.

You must submit this information along with your bid, proposal or offer.

- a. Contractor/offersor shall identify whether it has current contracts (including leases) with other units of State of Illinois government by checking "Yes" \_\_\_\_\_ or "No" \_\_\_\_\_.

If "Yes" is checked, identify each contract by showing agency name and other descriptive information such as purchase order or contract reference number (attach additional pages as necessary).

- b. Contractor/offersor shall identify whether it has pending contracts (including leases), bids, proposals, or other ongoing procurement relationships with other units of State of Illinois government by checking "Yes" \_\_\_\_\_ or "No" \_\_\_\_\_.

If "Yes" is checked, identify each such relationship by showing agency name and other descriptive information such as bid or project number (attach additional pages as necessary).

This disclosure is submitted on behalf of \_\_\_\_\_  
(Name of Contractor/Offeror)

Official authorized to sign on behalf of contractor/offersor:

Name (printed) \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_