

## ATTACHMENT 2

### SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its Unified Judicial Branch (STATE), and \_\_\_\_\_ (CONTRACTOR);

#### 1. SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by STATE under this contract, agrees to provide the services defined in Attachment A.

#### 2. TERM OF CONTRACT

The term of this contract is for a period commencing on the 1st day of October, 2008, and terminating on \_\_\_\_\_.

#### 3. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties. Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- a) The terms of this Contract as may be amended;
- b) STATE's Solicitation Amendment #1 to Request for Proposal ("RFP") number \_\_\_\_\_ dated \_\_\_\_\_;
- c) STATE's response to bidder's questions dated \_\_\_\_\_;
- d) STATE's Request for Proposal ("RFP") number \_\_\_\_\_, dated \_\_\_\_\_;
- e) CONTRACTOR's Best and Final offer dated \_\_\_\_\_;
- f) CONTRACTOR's proposal dated \_\_\_\_\_ in response to RFP number \_\_\_\_\_.

#### 4. TERMINATION OF CONTRACT

- a. **Termination for convenience.** In addition to its other rights to terminate, STATE may terminate this contract, in whole or in part for STATE's convenience, by ten days notice to CONTRACTOR. During this ten day period, CONTRACTOR shall wind down and cease its services as quickly and efficiently as reasonable possible, without performing unnecessary services or activities and by minimizing negative effects on STATE from such winding down and cessation of services. If this contract is so terminated, STATE shall be liable only for payment in accordance with the terms of this contract for services satisfactorily rendered prior to the effective date of termination.

In case of a termination for convenience, STATE will pay to vendor the agreed upon price, if separately stated, for deliverables for which acceptance has been given by STATE, amounts for services provide prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific deliverable for which acceptance has been given, and amounts for deliverables which are in development but which have not received acceptance. The amounts for any such services and deliverables in development but not accepted will be costs actually and reasonably incurred by CONTRACTOR, but those costs shall be no greater than the final purchase price for each deliverable. In addition, STATE agrees to compensate CONTRACTOR for reasonable and necessary costs that are incurred by

CONTRACTOR on this project, as a result of STATE's termination for convenience, for undepreciated or unamortized equipment and software licenses, early termination of leases, and other reasonable and necessary project-related expenses, subject to STATE's reasonable judgment and the availability of STATE funds and receipt of supporting documentation from Contractor.

**b. Termination for lack of funding or authority.** STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.
- 4) Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

**c. Termination for cause.** STATE by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:

- 1) If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or
- 2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of STATE provided in the above clause related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### **5. FORCE MAJEURE**

CONTRACTOR will not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond CONTRACTOR's reasonable control and CONTRACTOR gives notice to STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

#### **6. RENEWAL**

This contract will not automatically renew. STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least sixty days before the scheduled termination date.

#### **7. SEVERABILITY**

If any term of this contract is declared to be illegal or unenforceable by a court having

jurisdiction, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

**8. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent. However, CONTRACTOR may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR will not have the authority to contract for or incur obligations on behalf of STATE.

**9. NOTICE**

All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

_____	_____
_____	_____
_____	_____

**10. APPLICABLE LAW AND VENUE**

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought and solely litigated in the District Court of Burleigh County, North Dakota.

**11. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

**12. INDEMNITY**

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Further:

- a. CONTRACTOR, at its own expense, will defend and indemnify STATE against claims that products furnished under this contract infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.

- b. As to any product which is subject to a claim of infringement or misappropriation, CONTRACTOR may (a) obtain the right of continued use of the product for STATE or (b) replace or modify the product to avoid the claim. If neither alternative is available on commercially reasonable terms then, at the request of CONTRACTOR, any applicable Software license and its charges will end, STATE will stop using the product, and will return the product to CONTRACTOR. Upon return of the product, CONTRACTOR will give STATE a credit for the price paid to CONTRACTOR, less a reasonable offset for use and obsolescence.
- c. CONTRACTOR will comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of the contract and conduct its activities so as not to endanger any person or property.

### **13. INSURANCE**

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a. "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
  - b. a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;

- c. a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
  - d. a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
  - e. cross liability/severability of interest for all policies and endorsements;
  - f. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - g. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

#### **14. ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due of any kind under this contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

#### **15. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

#### **16. CONFIDENTIALITY**

Absent a court order, CONTRACTOR agrees not to use or disclose any information it receives from STATE under this contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by STATE. Absent a court order, STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and which STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

#### **17. COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, except for disclosures prohibited in Section 16, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under Section 16, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact STATE immediately upon receiving a

request for information under the open records law and to comply with STATE's instructions on how to respond to the request.

**18. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

**19. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

**20. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

**21. PREPAYMENT**

STATE will not make any advance payments before performance by CONTRACTOR under this contract.

**22. TAXPAYER ID**

CONTRACTOR's federal employer ID number is: \_\_\_\_\_.

**23. EFFECTIVENESS OF CONTRACT**

This contract is not effective until fully executed by both parties.

THE REMAINING SECTIONS MAY or MAY NOT BE NEEDED...THE VENDOR MAY HAVE THEIR OWN LANGUAGE TO BE USED IN THEIR STATEMENTS OF WORK...

**24. PERSONNEL AND PROJECT MANAGEMENT**

a. CONTRACTOR shall provide individuals to:

b. STATE will designate a Project Manager to:

If, during the course of the contract, it becomes necessary for STATE to change the person assigned as STATE's Project Manager, STATE will notify CONTRACTOR in writing, pursuant to section ten above.

c. CONTRACTOR personnel will be responsible for providing written, weekly time utilizations, for each individual, for each week, to STATE's Project Manager, or STATE's project staff, as STATE's Project Manager may assign.

- d. CONTRACTOR's Project Manager shall deliver to STATE's Project Manager, weekly/monthly reports of CONTRACTOR's progress on the project and meeting the objective/deliverables as stated in the scope of services. Each report must contain a description of the current status of the project, the tasks on which time was spent, the estimated progress to be made in the next week/month, and the problems encountered, the proposed solutions to them and their effect, if any, on the deliverable schedule.
- e. Unless CONTRACTOR is notified otherwise by STATE, STATE's Project Manager shall carry out STATE's administrative and management functions under this contract, shall be responsible for acceptance of the contract deliverables, and shall provide support and overall direction to CONTRACTOR in producing the contract deliverables.
- f. STATE's working hours are Monday through Friday from 8:00 AM until 5:00 PM (CST or CDT) with one hour for lunch. STATE Project Manager may approve alternate work schedules.
- g. According to STATE policy, STATE personnel will only be obligated to work a forty-hour workweek, Monday through Friday, and will be allowed reasonable vacation, sick or educational absences.
- h. CONTRACTOR's personnel will not be expected to work on state holidays or other mandatory leave days.
- i. CONTRACTOR agrees and understands that STATE's execution of the contract is predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified; primary being <name of appropriate personnel, if applicable, >. Therefore, CONTRACTOR agrees that no substitution of such specific individuals and/or personnel qualification will be made without the prior written approval of STATE and that such substitution will be made at no additional cost to STATE. CONTRACTOR further agrees that any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally proposed and that STATE's approval of a substitution will not be construed as an acceptance of the substitution's performance potential. STATE agrees that an approval of a substitution will not be unreasonably withheld. CONTRACTOR shall furnish experienced, qualified Information Technology personnel to participate in the system development project. The personnel furnished must have the knowledge necessary to complete requirements as defined in the Contract.
- j. Upon request by STATE, CONTRACTOR shall replace any CONTRACTOR personnel who STATE determines, in its sole discretion, to be unable to perform the responsibilities of the contract acceptably. E.g. inappropriate or unprofessional personal conduct, professional inabilities, etc.
- k. CONTRACTOR shall conduct background investigations on all contracted staff and subcontractors assigned by CONTRACTOR to perform work under this contract, and shall furnish the results of such background investigations to STATE. STATE shall have the right to reject any individual assigned to perform work under this contract if, in its sole discretion, it determines that the results of the background investigation make the individual unacceptable. The background investigations to be performed are:
  - Criminal History, <applicable/not applicable>
  - References, <applicable/not applicable>
  - Employment, <applicable/not applicable>
  - Motor vehicle, <applicable/not applicable>
  - Credit, <applicable/not applicable>
  - Education, <applicable/not applicable>
- l. CONTRACTOR shall assign personnel on a full-time basis. In the event that a work assignment does not justify full-time participation, CONTRACTOR shall assign person

on a part-time basis with prior written approval of STATE's Project Manager. However, if the part-time assignments are specified in the contract, no written approval from STATE's Project Manager will be necessary except for substitution of CONTRACTOR personnel.

- m. CONTRACTOR shall warrant that personnel assigned to perform tasks in response to this contract will remain assigned, for the agreed-upon length of time, and will not be replaced or reassigned except by mutual agreement and written notice of STATE. Prior to assignment of personnel, CONTRACTOR shall obtain written approval from STATE for all personnel to be assigned to this project.

## **25. EQUIPMENT, MATERIALS AND WORKSPACE**

- a. CONTRACTOR's assigned contract staff will be on site for the duration of the contract.
- b. On site will be <list agency physical location address>.
- c. STATE agrees to provide an adequate working space, when required.
- d. Equipment and software for on-site CONTRACTOR personnel is to be provided by <CONTRACTOR or Agency name>.
- e. When STATE and CONTRACTOR agree that remote access to systems is required, STATE will provide the necessary remote access security to enable CONTRACTOR access to the appropriate STATE systems.

## **26. REVIEW, APPROVAL, AND ACCEPTANCE PROCESS**

- a. Unless otherwise noted in this contract or agreed upon in writing by both parties, acceptance testing will be performed on-site, on STATE's platform.
- b. Prior to acceptance testing, CONTRACTOR will furnish STATE with documentation of the deliverable item and the expected performance.
- c. The review, approval, and acceptance process for all project deliverables as specified in scope of services will be the responsibility of STATE's Project Manager. The Project Manager will be responsible for ensuring that the approval process follows the proper procedures prior to acceptance of deliverables by STATE. STATE shall apply the following procedures to acceptance of all deliverables:
  - 1) For the life of this contract, STATE has the right to complete a review of any deliverable received from CONTRACTOR and notify CONTRACTOR of STATE's findings; and
  - 2) If the deliverable is unacceptable, CONTRACTOR shall resubmit the deliverable after the appropriate correction or modifications have been made.
- d. The process described above will be repeated until acceptance is obtained, STATE terminates for cause or a waiver is obtained.

## **27. CHANGE CONTROL PROCESS**

- a. CONTRACTOR and STATE will implement a change control process to manage issues and changes during the life of the project. A change request must be in writing to document the potential change.
- b. The change will be reviewed and, if acceptable to STATE, CONTRACTOR will submit to STATE an estimate of the charges and the anticipated changes in the delivery schedule that will result from the proposed change in the scope of work.
- c. CONTRACTOR will continue performing the services in accordance with the original agreement, until the parties agree in writing on the change in the scope of work.
- d. Change orders that involve changes to the scope of services or that result in a requirement for additional project funding will require approval by STATE.
- e. Once both parties approve a change, a change order shall be issued in writing prior to implementation.



- f. All change orders will be logged and tracked.
- g. **Steps for the change control process:**
  - 1) Complete a write-up for the proposed change and submit copies to CONTRACTOR and STATE's Project Managers who will in turn provide to relevant parties for assessment.
  - 2) Record the request in the change control log.
  - 3) Investigate the impact of the proposed change and evaluate the impact of not performing the change.
  - 4) Prepare a response to the proposed change.
  - 5) Retain the original in the project library.
  - 6) CONTRACTOR and STATE agree whether the change should be performed and obtain authorization sign-off of the change request. The appropriate document is created.
- h. **If the change is not accepted:**
  - 1) CONTRACTOR's Project Manager will discuss and document the issue with STATE's Project Manager.
  - 2) The proposed change can be modified and re-submitted or withdrawn if it is agreed to be non-essential. In this case the reasons will be documented.
- i. **If the change is accepted:**
  - 1) Once the change request has been approved and signed, work may begin, unless the change results in a change to the price, schedule or both. If such is the case, work will not proceed until such time as the document is modified and signed off on by the authorized parties.
  - 2) CONTRACTOR's Project Manager and STATE's Project Manager will adapt project plans to incorporate approved changes.
  - 3) Each change request duly authorized in writing by STATE and agreed to by CONTRACTOR will be deemed incorporated into and part of this contract.
  - 4) Progress on the change requests will be reported at progress meetings or, for those cases where those meetings do not occur, status reports to all pertinent parties will be furnished.
- j. Both CONTRACTOR and STATE must sign off that a change has been completed.
- k. The log will be updated.
- l. The log will be supplied at the progress meetings or, in those cases where those meetings do not occur, the log update information will be included in the status reports to STATE's Project Manager.

## 28. **FINAL ACCEPTANCE**

- a. "Final Acceptance" will be defined as:
  - 1) The successful completion of all deliverables as stated in the scope of services and following the Review, Approval, and Acceptance processes described above, **AND**
  - 2) The final delivered product fully implemented in STATE's live production environment no later than \_\_\_\_\_, **AND**
  - 3) STATE will have sixty-days thereafter in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR will use its best efforts to make the product conform to the technical specifications/system design as soon as possible and at no additional cost to STATE. CONTRACTOR shall continue to use its best efforts to make the product conform to the technical specifications/system design until STATE accepts the product or terminates this agreement upon written notice to CONTRACTOR.

## 29. **PAYMENTS**

- a. The contractual amount to be paid for this project shall constitute the entire compensation due CONTRACTOR for the service and all of CONTRACTOR's obligations regardless of the difficulty, materials or equipment required. The contractual amount includes fees, licenses, overhead, profit and all other direct and indirect costs incurred or to be incurred, by CONTRACTOR, except as noted in this section of the contract. A valid change order processed in accordance with this contract may modify the contractual amount.
- b. STATE has tax-exempt status.
- c. The cost of the project is firm for the duration of the contract and is not subject to escalation for any reason, unless this contract is amended, or a valid change order is processed in accordance with this contract.
- d. The project cost will be billed by CONTRACTOR to STATE, and is tied directly to STATE's acceptance of agreed upon deliverables as specified in the scope of work.
- e. Payment will be made upon receipt of invoices from CONTRACTOR.
- f. The final cost of each billing will be as specified in the scope of work.
- g. Total dollar contractual amount of \$\_\_\_\_\_, shall not be exceeded.
- h. State will be allowed thirty-days to process each payment.
- i. No claim for additional services, not specifically provided herein, will be allowed by STATE except to the extent provided by a valid change order or amendment to this contract.
- j. The payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this contract, not to constitute allowable costs. Any payment will be reduced for overpayments, or increased for underpayments on subsequent invoices.
- k. STATE reserves the right to deduct from amounts that are or will become due and payable to CONTRACTOR under this, or any contract between the parties, any amounts that are or will become due and payable to STATE by CONTRACTOR.
- l. CONTRACTOR shall maintain documentation for all charges against STATE under this contract. The books, records and documents of CONTRACTOR, as they relate to work performed or money received under this contract, must be maintained for a period of three (3) full years from the date of the final payment, and must be subject to audit, at any reasonable time and upon reasonable notice, by STATE or the State Auditor or the Federal Auditor or their duly appointed representatives.
- m. Reimbursement for contracted staff travel and travel-related costs associated with on-site work done in performance of this contract will be paid at the same rate payable to State employees under North Dakota Century Code Section 44-08-04.

### **30. WORK PRODUCT**

Product(s) created or purchased under this contract belong to STATE and must be delivered or returned upon termination of this contract if these items were charged to and paid for by STATE in the course of CONTRACTOR's performance of this contract. All software and related materials developed by CONTRACTOR in performance of this contract for STATE will be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. If CONTRACTOR incorporates any of CONTRACTOR's Software in any work product provided to STATE, CONTRACTOR agrees to provide written notice to STATE of its incorporation in the work product and to convey to STATE a non-exclusive, perpetual, cost-free license, and patent and copyright indemnity, for the software to use that software for its intended purpose. All other ownership rights to CONTRACTOR's software will remain with CONTRACTOR.

**31. REPRESENTATIONS AND WARRANTIES**

CONTRACTOR represents and warrants to STATE that neither CONTRACTOR, in connection with performing the services in performance of this contract, nor the completed product delivered by CONTRACTOR, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. CONTRACTOR further represents and warrants to STATE that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this contract or in delivery of the completed product. CONTRACTOR further represents and warrants to STATE that neither CONTRACTOR nor any other company or individual performing services pursuant to this contract is under any obligation to assign or give any work done under this contract to any third party.

**32. PRODUCT CONFORMITY**

STATE will have twelve (12) months following final acceptance of the product(s) delivered by CONTRACTOR pursuant to this contract to verify that the product(s) conform to the requirements of this contract and perform according to CONTRACTOR system design specifications. Upon recognition of an error, deficiency, or defect, by STATE, CONTRACTOR will be notified by STATE citing any specific deficiency (deficiency being defined as CONTRACTOR having performed incorrectly with the information provided by STATE, not CONTRACTOR having to modify a previous action due to additional and/or corrected information from STATE). CONTRACTOR, at no additional charge to STATE, will provide a correction or provide a mutually acceptable plan for correction within thirty-days following the receipt of STATE's notice to CONTRACTOR. If CONTRACTOR's correction is inadequate to correct the deficiency, or defect, or the error recurs, STATE may, at its option, act to correct the problem. CONTRACTOR will be required to reimburse STATE for any such costs incurred or STATE may consider this to be cause for breach of contract.

**33. MAINTENANCE**

CONTRACTOR will provide, and STATE may subscribe to, maintenance services, including software/hardware updates and technical support services, for the product(s) delivered pursuant to this contract commencing at the end of the warranty period. CONTRACTOR and STATE will negotiate the terms and price of such maintenance services, however CONTRACTOR will not charge STATE more than \$\_\_\_\_\_ per year for the first two (2) years of maintenance services. Starting with the third year of maintenance, CONTRACTOR agrees that any change to the annual maintenance and support fee may increase by not more than 5% per year for the life of this contract. CONTRACTOR warrants that it will continue to offer maintenance services for the product(s) for a minimum of three (3) years from the date of final acceptance or installation date of any software/product update.

CONTRACTOR

STATE OF NORTH DAKOTA

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTACHMENT A - SCOPE OF SERVICES

**SAMPLE ONLY – TO BE DETERMINED AND MUTALLY AGREED UPON BY STATE AND VENDOR.**

CONTRACTOR, in exchange for the compensation paid by STATE under this contract, agrees to provide the following services:

**Deliverable 1:** <name of deliverable>

**Description:** <detailed description of deliverable>

**Completion Date:**

**Acceptance:** <describe acceptance testing criteria, what is required for this deliverable to be accepted, how acceptance will be conveyed, i.e. Signoff by customer on this deliverable>

**Deliverable 2:** Technical System Design

**Description:** CONTRACTOR shall develop the technical design for the system in accordance with the functional specifications in <exhibit x> attached hereto. The technical system design must include hardware and software specifications, performance specifications, a narrative description of the system, a description of all input data (such as type, range of expected values, and relationship to other data), a description and pictures of all screens, including sequence diagrams, and definitions and descriptions of all outputs and reports to be generated and the process for generating them.

**Completion Date:**

**Acceptance:** Upon receipt of the technical design document from CONTRACTOR, STATE will have 10 (ten) working days in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise the design to make it acceptable to STATE within the following 10 (ten) working days. If STATE rejects technical system design a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above or terminating this agreement upon written notice to CONTRACTOR.

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**Deliverable X**

**Payments Schedule:**

**Payment Schedule**

**Payment**

Upon acceptance of Deliverable 1	\$ _____
Upon acceptance of Deliverable 2	\$ _____
Upon acceptance of Deliverable X	\$ _____
Upon final acceptance	\$ _____