1. PROFESSIONAL SERVICES CONTRACT
2. Contract #00000000000000000000XXXXX
3. This Contract ("this Contract"), entered into by and between Indiana Department of Administration (the "State") and XCONTRACTOR (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor

The Indiana Department of Administration on behalf of All State Agencies is establishing a quantity purchase agreement (QPA# XXXXX) with the Contractor to provide the following vehicle types for the State of Indiana and all services necessary to provide new vehicles as set forth in RFP ASA-20-005 and Contractor’s response attached hereto in the incorporated Exhibits and made a part of this Contract herein by reference:

* EXAMPLE
* Mid-Size Sedan
* Full-Size Sedan
* Mid-Size SUV
* Full-Size SUV
* Etc.

The following Contract Exhibits are hereby included in this Contract and incorporated herein by reference as follows according to Section 34 of this Contract (Order of Precedence):

* **Exhibit A – Vehicle & Accessory Pricing**
* **Exhibit B – Performance Metrics and Corrective Actions**
* **Exhibit C – Minimum Vehicle Specifications**
* **Exhibit D – RFP ASA-20-005 Documents & Response**

The duties of the Contractor are set forth, attached hereto, and fully incorporated herein:

1. **Entities Eligible to Utilize Contract**
2. State Agency

As defined in IC 4-13-1, “state agency” means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government.

1. K-12Indiana

The Contractor shall extend the pricing and services under this Contract to all K-12 entities and work with Educational Service Centers (ESC) to provide access and the means to make purchases through the K-12Indiana purchasing portal which can be accessed at K12Indiana.com.

1. LibraryIndiana

The Contractor shall extend the pricing and services under this Contract to all Indiana Libraries and work with the State to provide access and the means to make purchases through the LibraryIndiana purchasing portal which can be accessed at LibraryIndiana.com.

1. Extension of Other Governmental Entities/OneIndiana

The Contractor shall extend the pricing and services under this Contract to all other governmental entities within the State of Indiana (“Governmental Entities”). Other Governmental Entities are defined as: An agency, board, a branch, a bureau, a commission, a council, a department, an institution, an office, or another establishment of any of the following: (1) The judicial branch (2) The legislative branch (3) A political subdivision (includes towns, cities, local governments, etc.) (4) A State educational institution. The Contractor shall work with the State to provide access and the means to make purchases through the OneIndiana purchasing portal which can be accessed at OneIndiana.net.

1. Unless otherwise specified within this Contract, the term “Requesting Entity” shall refer to entities/procurement initiatives 1 -4 as set forth in Section A, Entities Eligible to Utilize Contract. Ordering and/or usage instructions exclusive to State Agencies or Governmental Entities shall be identified within each article.
2. **Order Confirmation**

The Contractor is required to provide an order confirmation to the Requesting Entity within two (2) business days from receipt of the Purchase Order, including item description (including vehicle make, model, model year, any add-on accessories and options), quantity, vehicle order number(s), contact information, purchase order number, unit price, extended price, delivery fees, total price, and the delivery date agreed to by the Contractor and the Requesting Entity.

1. **Delivery Requirements**

Delivery of the new vehicle(s) ordered by the projected delivery date is crucial to the Requesting Entity. The Contractor shall use commercially reasonable best efforts to maintain a Fill Rate of 100% within the maximum delivery date range of 180 calendar days from receipt of chassis (mobility vans only), or a date mutually agreed upon by the Requesting Entity and the Contractor. The Contractor shall use commercially reasonable best efforts to meet the requirements specified by each Requesting Entity and to deliver to all current and potential delivery sites or points of use within the State of Indiana.

If for any reason the Contractor is unable to meet the maximum delivery date of 180 calendar days or the date that was otherwise mutually agreed upon for a vehicle, the Contractor shall be subject to consequential Invoice Credits and corrective actions as described **Exhibit B – Performance Metrics and Corrective Actions**.

There will be no delivery charge for the following delivery locations: Marion County, INDOT Facility in Greenfield, Camp Atterbury – DNR Quartermaster facility in Johnson County, and DOC - Pendleton. Additionally, there will be no delivery charges for up to and including 50 miles from the dealership. After the 51st mile, there will be a flat, dollar-per-mile charge with the mileage as measured by Google Maps.

1. **Order Due Date Notification and Guarantee**

The Contractor is required to notify the State immediately when manufacturers’ final order due dates are released. All orders received by the Contractor on, or prior to a manufacturer’s final order due date shall guarantee delivery of the vehicle as described on the purchase order at the contract price. If a vehicle that is ordered before the manufacturer’s order due date (as last communicated in writing to IDOA) is out of stock or out of production, the Contractor must honor the originally ordered vehicle’s pricing on the newer year model or a functionally equivalent vehicle that is acceptable to the Requesting Entity.

If the Contractor provides a replacement vehicle that is acceptable to and approved by the Requesting Entity, but after the original delivery date or a revised date approved by the Requesting Entity, the Contractor will be subject to the Delivery and Pick Up Timeliness metric’s Invoice Credit calculation as detailed in **Exhibit B – Performance Metrics and Corrective Actions**.

If the Contractor and the Requesting Entity cannot come to an agreement on a replacement vehicle that is acceptable to the Requesting Entity within five (5) business days, the Requesting Entity may cancel the order at no cost. The Contractor will also be subject to the Order Fill Rate metric’s Invoice Credit calculation as detailed in **Exhibit B – Performance Metrics and Corrective Actions**.

1. **Vehicle Requirements**

Minimum specifications for each vehicle type can be found in **Exhibit C – Minimum Vehicle Specifications**.

1. **Vehicle Drivable Upon Delivery**

All vehicles sold under this contract shall be fully serviced as per the manufacturer’s pre-delivery recommendations and all equipment accessories and options are to be installed with the adjustments made that are required to prepare the vehicle for immediate and continuous operation. All necessary fluids must be filled to the maximum level. The gasoline tank must contain at least 3 gallons.

1. **Advertisements on Vehicle**

All vehicles sold under this contract shall not have any advertisement or dealer logo of any kind affixed to the vehicle. Only information required by law shall be affixed to the vehicle.

1. **Odometer Limit**

All vehicles sold under this contract must be delivered or picked up with less than 1000 miles on the odometer. If the Contractor believes that a vehicle will have 1000 miles or more on the odometer before delivery or pickup, the Contractor must seek the written approval of the Requesting Entity and IDOA Contract Manager. The Requesting Entity and IDOA has the authority to reject any vehicle that has 1000 miles or more on the odometer if the Requesting Entity and IDOA did not already agree to such mileage in writing.

1. **Pre-Delivery Service Checklist**
   1. **Pre-Delivery Inspection**

Prior to delivery of any vehicle, the dealer should make arrangements with the State or an ordering Authorized User for the purpose of scheduling delivery and conducting an inspection of delivered vehicles. The State or an ordering Authorized User reserve the right to inspect each delivered vehicle to establish conformity to specifications prior to acceptance. All delivered vehicles shall be ready for immediate operation. All Bidders awarded a Contract shall perform all pre-delivery servicing and adjustments, which includes, without limitation, all manufacturers’ recommendations, and the following:

1. Complete vehicle winterization;
2. Complete lubrication of operating chassis, engine, and mechanisms with manufacturer’s recommended grades of lubricants;
3. All fluid level checks to ensure that the vehicle meets proper manufacturer’s specifications;
4. Adjustments to each vehicle’s engine/motor/drive to ensure operating conditions consistent with manufacturer specifications;
5. Checking to ensure proper operation of all accessories, gauges, lights, and mechanical and hydraulic features;
6. Charging battery and inspecting electrical, braking, and suspension systems;
7. Inflating tires, including spare, to optimal pressure;
8. Filling gas tanks with gas or alternative fuel to at least 3 gallons.
9. Ensuring all vehicles have less than 1000 miles on odometer upon delivery.
10. Ensuring that vehicles are thoroughly cleaned and detailed inside and out prior to delivery. All upholstery and floor protection shall be removed. Manufacturer’s floor mats are to be placed, window decals removed, and all adhesives cleaned from the vehicle. The vehicle must be delivered free of any decal or other attached item identifying the dealer. The vehicle is expected to be completely cleaned and operational at the time of delivery;
11. Correcting all factory defects prior to delivery, and;
12. Providing two (2) pre-tested keys marked with the VIN number. The vehicle key code must be provided, attached to the keys.
    1. **Documentation Requirements**

The following document package shall be delivered with each vehicle:

A. Dealer’s completed Pre-Delivery Inspection Document;

B. Operators (owners) Manual;

C. Manufacturer’s Warranty Information;

D. Dealer Acknowledgement of Receipt of Order;

E. Authorized User’s Purchase Order;

F. Vehicle Window Sticker;

G. Original Odometer Statement;

H. Manufacturer’s Statement of Origin (MSO).

* 1. **Final Inspection, Delivery, and Acceptance of Vehicle**

The State or an ordering Authorized User shall have three (3) business days from delivery to thoroughly inspect each delivered vehicle and notify the Bidder awarded a Contract in writing that the vehicle meets specifications and is accepted, or it does not meet specifications or the vehicle is otherwise defective and is not accepted. The Bidder awarded a Contract shall have the vehicle transported for any required service or adjustments within two (2) business days following notification by the State or an Authorized User that the delivered vehicle is not accepted. The State or an Authorized User reserves the right, in its sole and absolute discretion, to withhold acceptance of any delivered vehicle until such time as the vehicle meets all specifications, service, or adjustments made to the vehicle to the State’s or an Authorized User’s satisfaction. The costs of any transportation and delivery required as part of the initial delivery or any re-deliveries are the responsibility of the Bidder awarded the Contract.

1. **Liquefied Petroleum Gas (LPG) Fuel Authorized Conversion**

Pickup Trucks shall have the option to be purchased as LPG-capable vehicle. The Contractor confirms that the organization utilized by the Contractor to conduct the LP conversion process for each vehicle is certified by the vehicle’s manufacturer.

1. **Reporting**

The Contractor will provide IDOA with the reports listed below as well as any reports requested by the State on an ad hoc basis.

1. **Monthly Sales Report:** The Contractor shall submit to IDOA a monthly sales report on the 15th of each month documenting the sales for the past month. Reports shall include, but are not limited to:

* Requesting Entity Name
* End-user Type (State Agency, School, Local Government, other)
* Purchase Order Number and Date of Order
* Estimated Date of Delivery
* Vehicle model year, make, model and any other accessories or options purchased
* Price per unit
* Quantity ordered
* Extended Price

1. **Quarterly non-QPA Sales Report:** The Contractor shall submit to IDOA a quarterly report that documents any sales made to Indiana government customers but not under the auspices of this QPA. For example, the Contractor will include vehicles that are not an approved QPA model in this report. The report will contain the same data points and shall be in the same format as the monthly sales report.
2. **Quarterly Performance Report:** The Contractor shall submit to IDOA a quarterly performance report on the 15th of each month, documenting the degree to which the Contractor met the performance metrics outlined in Section 1.4.14 over the past month.
3. **Quarterly Other Governmental Bodies Report:** The Contractor shall submit to IDOA a quarterly report that documents any sales made to Other Governmental Bodies that falls under the auspices of this QPA.
4. **Close-out Report:** The Contractor shall submit to IDOA a close-out report within one hundred twenty (120) days after the expiration of the contract. The close-out report must cover all sales now shown on the final monthly report and reconcile all errors and credits. If the Contractor reporting all sales and reconciled all errors and credits on the monthly sales report, then the Contractor should show zero (0) sales in the close-out report. The report will contain the same information and shall be in the same format as the monthly sales report.

All reports shall be submitted in a Microsoft Excel template provided by IDOA at the start of the contract term.

1. **Auditing**

The State reserves the right to audit at any time the Contractor’s dealer invoices, factory invoices, evidence of holdbacks and dealer incentives, customer incentives, published price lists, or any other evidence establishing the Contractor’s net cost, upon request.

1. **Timely Reponses to Inquiry**

The Contractor shall respond to comments or questions from the State or any Requesting Entity within one (1) business day. For all unresolved questions older than two (2) business days, the Contractor shall contact the questioner and provide an estimated date of when the answer will be communicated. If the Contractor fails to meet this requirement, the Contractor will be subject to all applicable corrective actions in **Exhibit B – Performance Metrics and Corrective Actions**.

For requests for quotes on non-QPA items, the Contractor shall acknowledge the Requesting Entity with an email confirmation response within two (2) business days. The Contractor shall provide the requested quote within five (5) business days. If the requested item is past the Order Due Date or not available for order then the requested quote is not required and notification of such is required within two (2) business days of the initial request. If the Contractor fails to meet this requirement, the Contractor shall be subject to all applicable corrective actions in **Exhibit B – Performance Metrics and Corrective Actions**.

1. **Quarterly Business Review (QBR)**

A quarterly business review shall take place among the Account Managers, State Agency Representatives, and the State Contract Manager to review the quality of service provided to the State by the Contractor. It is at this time that the State will score the Contractor on a variety of performance criteria, including, but not limited to, the performance metrics described in **Exhibit B – Performance Metrics and Corrective Actions.** The Contractor will also have the opportunity to provide the State with suggestions on how to improve its own processes relating to vehicles.

1. **2. Consideration**.

The State shall pay for the vehicles that meet the minimum specifications in **Exhibit C – Minimum Vehicle Specifications** according to the following:

Vehicles purchased through this contract will be priced using a flat Purchase Price as specified in **Exhibit A – Vehicle & Accessory Pricing**.

The Contractor shall be paid, in arrears, for the vehicle purchase price as set forth in **Exhibit A – Vehicle & Accessory Pricing**, attached hereto and incorporated herein. Total remuneration under this Contract shall not exceed $10,000,000.00.

**Price Decrease Reciprocation**

If, during the contract term, the Contractor’s costs from the manufacturer for a vehicle, accessory, option or any other equipment or product sold under this contract decrease, the Contractor shall notify the State of such decrease to pass along any cost savings to the State. In addition, the State shall receive any other incentives offered at the time of sale of each vehicle in addition to the guaranteed Incentives.

1. Total remuneration under this Contract shall not exceed $10,000,000.00.
2. **3. Term**.

This Contract shall be effective for a period of 2 years. It shall commence on February 1, 2020 and shall remain in effect through March 29, 2022. There may be two one-year renewals for a total of four years at the State’s option.

1. **4. Access to Records**.
2. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.
3. **5. Assignment; Successors**.
4. A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

1. **6. Assignment of Antitrust Claims.**
2. As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
3. **7. Audits**.

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

1. The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq*.
2. **8. Authority to Bind Contractor**. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.
3. **9. Changes in Work**. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.
4. **10. Compliance with Laws.**
5. A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
6. B.  The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq*., IC § 4-2-7, *et seq*. and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract.**If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
7. C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
8. D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
9. E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.
10. F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
11. G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
12. H. As required by IC § 5-22-3-7:
13. The Contractor and any principals of the Contractor certify that:
14. (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
    1. IC §24-4.7 [Telephone Solicitation Of Consumers];
    2. IC §24-5-12 [Telephone Solicitations]; or
    3. IC §24-5-14 [Regulation of Automatic Dialing Machines];
15. in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
16. (B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
17. The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,
18. (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
19. (B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
20. **11. Condition of Payment**. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.
21. **12. Confidentiality of State Information**. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.
22. The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.
23. **13. Continuity of Services.**
24. A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
25. Furnish phase-in training; and
26. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
27. B. The Contractor shall, upon the State's written notice:
28. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
29. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
30. C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
31. D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).
32. **14. Debarment and Suspension.**
33. A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
35. B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.
36. **15. Default by State**. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.
37. **16. Disputes.**
38. A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
39. B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.
40. C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.
41. D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.
42. E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.
43. F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.
44. **17. Drug-Free Workplace Certification.** As required byExecutive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.
45. In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of $25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:
46. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
47. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
48. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
49. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
50. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
51. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
52. **18. Employment Eligibility Verification.**  As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien.  The Contractor further agrees that:
53. A.  The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
54. B.  The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
55. C.  The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
56. The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.
57. **19. Employment Option**. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.
58. **20. Force Majeure**. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
59. **21. Funding Cancellation**. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
60. **22. Governing Law**. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.
61. **23. HIPAA Compliance.** If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.
62. **24. Indemnification**. The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor.

**25. Independent Contractor; Workers' Compensation Insurance.** The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

1. **26. Indiana Veteran Owned Small Business Enterprise Compliance**.  Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's IVOSB Division ("IVOSB Division") and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: **[Add additional IVOSBs using the same format.]**
2. IVOSB COMPANY NAME PHONE EMAIL OF CONTACT PERSON PERCENT
4. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*
5. *Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*
6. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*
7. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

A copy of each subcontractor agreement must be submitted to the IVOSB Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov), or mailed to IDOA, 402 W. Washington Street, Room W-478, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to [IndianaVeteransPreference@idoa.IN.gov](mailto:Indianaveteranspreference@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

1. The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report IVOSB certified subcontractor payments directly to the IVOSB Division, as reasonably requested and in the format required by the IVOSB Division.
2. The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**27. Information Technology Enterprise Architecture Requirements.**  If this Contract involves information technology-related products or services, the Contractor agrees that all such products or services are compatible with any of the technology standards found at <https://www.in.gov/iot/2394.htm> that are applicable, including the assistive technology standard. The State may terminate this Contract for default if the terms of this paragraph are breached.

1. **28. Insurance.**

A. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. 1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than $700,000 per person and $5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than $700,000 per person and $5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.

3. Errors and Omissions liability with minimum liability limits of $1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.

4. Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than $700,000 per cause of action and $5,000,000 in the aggregate.

5. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.

6. Surety or Fidelity Bond(s) if required by statute or by the agency.

7. Cyber Liability if requested by the State addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than $700,000 per occurrence and $5,000,000 in the aggregate.

The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

1. B.  The Contractor's insurance coverage must meet the following additional requirements:
2. 1.  The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
3. 2.   Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
4. 3.   The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
5. 4.   The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
6. 5.   The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.
7. C.  Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract.  The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.
8. **29. Key Person(s)**.
10. A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.
11. B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
12. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.
13. Key person(s) to this Contract is/are N/A.
14. **30. Licensing Standards**. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.
15. **31. Merger & Modification**. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.
16. **32. Minority and Women's Business Enterprises Compliance.**
17. Award of this Contract was based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan as detailed in the Minority and Women's Business Enterprises Subcontractor Commitment Form, commonly referred to as "Attachment A" in the procurement documentation and incorporated by reference herein**.** Therefore, any changes to this information during the Contract term must be approved by MWBE Compliance and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term.
18. The following MBE/WBE Division ("Division") certified MBE and/or WBE subcontractors will be participating in this Contract: **[Add additional MBEs and WBEs using the same format.]**
19. MBE or WBE COMPANY NAME PHONE EMAIL OF CONTACT PERSON PERCENT
21. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*
22. *Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*
23. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*
24. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

A copy of each subcontractor agreement must be submitted to the Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov), or mailed to MWBE Compliance, 402 W. Washington Street, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

1. The Contractor shall report payments made to Division certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report Division certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division.
2. The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.
3. **33. Nondiscrimination**. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.
4. The State is a recipient of federal funds, and therefore, where applicable,theContractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.
5. **34. Notice to Parties**. Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.
6. A. Notices to the State shall be sent to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
6. B. Notices to the Contractor shall be sent to:
7. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
8. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
9. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
10. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
11. E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
12. As required by IC § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.
13. **35. Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) RFP ASA-20-005 , (4) Contractor's response to RFP ASA-20-005 , and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.
14. **36. Ownership of Documents and Materials.**
15. A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.
16. B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.
17. **37. Payments**.
18. A.  All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

1. **38. Penalties/Interest/Attorney's Fees**. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.
2. Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.
3. **39. Progress Reports**. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**40. Public Record.** The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

1. **41. Renewal Option**. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.
3. **42. Severability**. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
4. **43. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.
5. **44. Taxes**. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.
6. **45. Termination for Convenience**. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.
7. **46. Termination for Default.**
8. A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:
9. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
10. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
11. Make progress so as to endanger performance of this Contract; or
12. Perform any of the other provisions of this Contract.
13. B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
14. C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
15. D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
16. **47. Travel**. No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the Budget Agency's *Financial Management Circular -- Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Circular* guidelines.
17. **48. Waiver of Rights**. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.
18. **49. Work Standards**. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.
19. **50. State Boilerplate Affirmation Clause**. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the *2019* OAG/ IDOA *Professional Services Contract Manual* orthe *2019 SCM Template*) in any way except as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
20. Non-Collusion and Acceptance
21. The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof**. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**
22. **Agreement to Use Electronic Signatures**
23. I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana.  I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation.  I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein.  I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: <https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST>
24. **In Witness Whereof**, the Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

1. XCONTRACTOR Indiana Department of Administration
2. By: By:
3. Title: Title:
4. Date: Date:

|  |  |
| --- | --- |
| Electronically Approved by:  Department of Administration  By: (for)  Lesley A. Crane, Commissioner  *Refer to Electronic Approval History found after the final page of the Executed Contract for details.* |  |
| Electronically Approved by:  State Budget Agency  By: (for)  Zachary Q. Jackson, Director  *Refer to Electronic Approval History found after the final page of the Executed Contract for details.* | Electronically Approved as to Form and Legality:  Office of the Attorney General  By: (for)  Curtis T. Hill, Jr., Attorney General  *Refer to Electronic Approval History found after the final page of the Executed Contract for details.* |

* 1. **Exhibit A – Vehicle & Accessory Pricing**

This document is an exhibit to the Contract, and is deemed to be attached to and incorporated within the Contract by reference. Any inconsistency, conflict, or ambiguity between this exhibit and the Contract shall be resolved by giving precedence and effect to the Contract.

The Contractor shall extend the pricing options of RFP ASA-20-005 to all State Agencies, libraries, and Governmental Entities, as defined in the Master Services Agreement **Section 1 (A)**.

PDF FILES TO BE ADDED AT TIME OF SIGNATURE

* 1. **Exhibit B – Performance Metrics and Corrective Actions**

This document is an exhibit to the Contract, and is deemed to be attached to and incorporated within the Contract by reference. Any inconsistency, conflict, or ambiguity between this exhibit and the Contract shall be resolved by giving precedence and effect to the Contract.

The Contractor shall extend the pricing options of RFP ASA-20-005 to all State Agencies, libraries, and Governmental Entities, as defined in the Master Services Agreement **Section 1 (A)**.

1. **Performance Metrics**

The State has developed a set of performance metrics and targets, defined below, that the Contractor shall meet or exceed in order to be in good standing on the contract. The performance for these metrics and invoice credits shall be reviewed quarterly by the State Contract Manager at each Quarterly Business Review.

* **Metric 1: Delivery and Pick Up Timeliness**

Goal: (a) The Contractor delivers the ordered vehicle/accessories/options by the scheduled delivery date and, (b) for orders where the Requesting Entity plans to pick up the vehicle, the Contractor has the vehicle ready for pick up by scheduled pick up date.

Performance Target: Zero (0) days late on each order

Calculation: Number of days that an order is delivered/available for pick up beyond the originally agreed upon delivery/pick up date

Invoice Credit: If the Contractor fails to meet the service level target, the Contractor will provide fifty dollars ($50.00) in Invoice Credit on the affected order’s invoice per calendar day late beyond the approved delivery/pick up date. There is, however, a five (5) calendar day grace period after the approved delivery/pick up date. If for any late order, the vehicle is still not delivered/ready for pick up after grace period ends, the Invoice Credit calculation will be triggered and will include the days of the grace period. With written documentation from the manufacturer, the Contractor shall not be required to pay the invoice credit in instances where the delivery date is not met due to manufacturer’s delay. "This written documentation shall be sent from the Contractor to IDOA and Requesting Entity within one (1) business day of the Contractors receipt from the Manufacturer. If the written documentation is sent later than 1 business day, the Contractor will provide fifty dollars ($50.00) in Invoice Credit on the affected order’s invoice per calendar day until it was received."=

* **Metric 2: Order Accuracy**

Goal: Orders are filled correctly. Vehicles meet the order specifications and all requested accessories and options are included.

Performance Target: 98% or higher

Calculation: Number of orders that are correctly filled monthly divided by total number of orders placed monthly

Invoice Credit: If the Contractor fails to meet the performance target for three (3) consecutive months, the Contractor will be required to provide a future two percent (2%) Invoice Credit based on the value of the affected orders over that three month period.

* **Metric 3: Order Fill Rate**

Goal: The Contractor is able to fill orders for vehicles, options, and accessories placed before the manufacturer’s order due date (as last communicated in writing to IDOA).

Performance Target: 100%

Calculation: Total number of orders filled monthly divided by total number of orders placed monthly.

Invoice Credit: If the Contractor is unable to fill the order and if then the Contractor and the Requesting Entity cannot come to an agreement on a replacement vehicle/option/accessory that is acceptable to the Requesting Entity in a reasonable time period, then the Contractor must provide the Requesting Entity with a future Invoice Credit in an amount equal to three percent (3%) of the total value of the cancelled order.

Each future Invoice Credit stemming from Metrics 2 and 3 will remain available to the Requesting Entity for up to a year after the contract term ends and applied to the subsequent future orders until the Invoice Credit has been fully depleted.

**B. Corrective Actions for Non-Compliance**

In addition to the Invoice Credits, the Contractor may be subject to Corrective Actions as detailed below. The Contractor shall submit to IDOA a quarterly performance report on the 15th of each month, documenting the degree to which the Contractor met the performance metrics outlined above over the past month. The Contractor will be allowed a sixty (60) calendar day grace period during the implementation phase of the contract to ramp up services, without scoring on the performance metrics above. After the sixty (60) calendar day grace period, tracking of each of the above performance metrics should begin, and the first report shall be due to the State contract manager one (1) month after the grace period ends. Once a final scorecard, which will include the above performance metrics, has been developed, the State contract manager will calculate a score for the contractor’s overall performance.

* Non-compliance with General Contract Provisions

The State monitors certain quality and performance standards, and holds the Contractor accountable for delivering the scope of work, as defined in **Section 1** of the Contract, and being in compliance with contract terms. The State accomplishes this by working collaboratively with the Contractor to maintain and improve programs, and not to impair Contractor stability. The State may enforce any of the remedies listed in this section if the Contractor is non-compliant with the contract.

* Non-compliance with Reporting Requirements

Reports submitted incorrectly or not delivered complete, on time, and in the correct reporting formats, as defined in **Section 1 (J)** of the Contract, constitute contractual non-compliance and the State may require corrective action(s) as described in this Section. The State may change the frequency of required reports, or may require additional reports, at the State’s reasonable discretion.

* Non-compliance with Performance Metrics

The State has developed a set of Performance Metrics as defined above in this Exhibit that the Contractor shall meet or exceed in order to be in good standing on the contract. The Performance Metrics shall be reviewed quarterly by the State Contract Manager to identify any issues requiring immediate attention from the State and Contractor.

* Corrective Actions

In the event that the Contractor fails to meet contract requirements, performance requirements or reporting standards set forth in the Contract, the State will provide the Contractor with a written notice of non-compliance and may require any of the corrective actions or remedies discussed below. The State will provide written notice of non-compliance to the Contractor within sixty (60) calendar days of the State's discovery of such non-compliance.

If the State elects not to exercise any Corrective Actions in a particular instance, this decision must not be construed as a waiver of the State's right to pursue future assessment of that performance requirement and associated damages, including damages that, under the terms of the Contract, may be retroactively assessed.

The nature of the corrective action(s) shall depend upon the nature, severity and duration of the deficiency and repeated nature of the non-compliance. The written notice of non-compliance corrective actions may be instituted in any sequence and include, but are not limited to, any of the following:

* Written Warning: The State may issue a written warning and solicit a response regarding the Contractor’s corrective action.
* Formal Corrective Action Plan: The State may require the Contractor to develop a formal corrective action plan (CAP) detailing the actionable cure for remedying the issue or issues of each performance metric in need of correction. The CAP must be submitted under the signature of the Contractor’s chief executive within (5) business days of request. Upon receipt of the CAP, the State shall review and advise of any questions. If the State has no objections to the plan, the plan shall be implemented within (24) hours. From that point, the Contractor has the agreed upon timeline to cure the issues. The timeline shall be determined by the State. If the CAP is not acceptable, the State may provide suggestions and direction to bring the Contractor into compliance. If the Contractor still has any issue associated with the Corrective Action Plan purpose, by the end of the timeline, the State shall obtain a credit of $2,500 from the Contractor in the form of a check with the supportive reporting model, unless the credit is waived by the State Contract Manager in writing.

Contract Termination: The State reserves the right to terminate the contract pursuant to the contract termination clauses.

* 1. **Exhibit C – Minimum Vehicle Specifications**

This document is an exhibit to the Contract, and is deemed to be attached to and incorporated within the Contract by reference. Any inconsistency, conflict, or ambiguity between this exhibit and the Contract shall be resolved by giving precedence and effect to the Contract.

The Contractor shall extend the pricing options of RFP ASA-20-005 to all State Agencies, libraries, and Governmental Entities, as defined in the Master Services Agreement **Section 1 (A)**.

PDF FILES TO BE ADDED AT TIME OF SIGNATURE

* 1. **Exhibit D – RFP ASA-20-005 Documents & Response**

This document is an exhibit to the Contract, and is deemed to be attached to and incorporated within the Contract by reference. Any inconsistency, conflict, or ambiguity between this exhibit and the Contract shall be resolved by giving precedence and effect to the Contract.

The Contractor shall extend the pricing options of RFP ASA-20-005 to all State Agencies, libraries, and Governmental Entities, as defined in the Master Services Agreement **Section 1 (A)**.

PDF FILES TO BE ADDED AT TIME OF SIGNATURE