1. MASTER SERVICES AGREEMENT
2. Contract #0000000000000000000030531
3. This Master Services Agreement (“Contract”), entered into by and between the State of Indiana through the Indiana Department of Administration (the “State”) and CONTRACTOR NAME (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:
4. Duties of the Contractor

The Indiana Department of Administration on behalf of All State Entities here in referred to as (“State”) is establishing a quantity purchase agreement (QPA) for LP Fuel. The Contractor shall provide these services and commodities necessary to the State as set forth in RFP #xxx, the Contractor’s response, and clarifications, attached hereto in specific exhibits and made a part of this Contract herein by reference. The following contract exhibits are hereby included in this Contract and incorporated herein by reference as follows:

**Exhibit A** = Service Level Agreements and Key Performance Indicator

**Exhibit B** = Performance Metrics and Corrective Actions

**Exhibit C** = RFP #xxx Documentation

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.

1. Unless otherwise specified within this Contract, the term “Ordering Agency” 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. **Restricted Items**

The Contractor shall not supply any items that are restricted and/or part of existing State of Indiana QPA’s or “state use” contracts unless authorized in writing by the State’s Contract Manager. Restricted categories included but not limited to: furniture, computer hardware and peripherals, computer software, telephone and telephone accessories, food and beverages, general industrial supplies, safety and security supplies, tools, chemical (janitorial) supplies, cleaning products and supplies, paper products (bath tissue, paper towels and facial tissue), office machine equipment.

1. **Contract Implementation**

The Contractor shall meet with the State and form an Implementation Plan timeline for the overall Contract Deployment. The Contractor shall customize the program to fit the State’s needs and desires for a successful program by meeting a minimum of one meeting per week during the implementation process.

1. Implementation Process

The Contractor shall complete the Implementation project in the following phases, and the Contractor shall provide a draft and final copy of the Project Management Plan to the State Account Manager:

1. Initiation

The Contractor shall ensure the needs of the State are adequately defined, by engaging with the State in High-level discussions on phase deliverables during Project Initiation and identify priorities that need to be completed through the implementation for a smooth transition. Additionally, the high-level barriers, potential problems, and roles and responsibilities of the project shall be summarized at this time.

1. Planning

The Contractor shall establish business and punch-out requirements and schedule of the project (including a list of deliverables and delivery dates). The Planning Phase shall involve identifying and documenting the project scope, tasks, schedules, risk, quality, and staffing needs. This identification process continues until all possible areas of the chartered project have been addressed.

1. Execution and Control

The Contractor’s implementation team shall carry out the project and perform project activities. The Contractor shall include Internal Quality Assurance (QA) testing on the punch-out in this phase. Once the internal QA requirement for functionality and operability have been satisfied, the Contractor shall offer the project to the State for testing. This process shall continue until the Sate is satisfied that the application meets the Contractor’s contractual obligations, as well as the specifications defined in the Project Management Plan.

1. Closing

The implementation team shall remain in place 30 days after the roll out date. The team shall continue to meet regularly to discuss: program success, improvement opportunities, end-user feedback, usage data, product changes, Contractor performance, future goals and objectives. The Contractor shall perform Project Closeout once all defined project objectives have been met and the State has accepted the final implementation of the Contract.

1. Implementation – Personnel

The Contractor shall provide a team of qualified experts to assist in the implementation effort. The Contractor’s team shall be led by an appointed Implementation Manager who shall be responsible for the overall management of the implementation process.

1. Implementation – Communication Tools
2. Implementation Schedule

The Contractor shall provide an implementation project schedule as a document that highlights the tasks required to implement the State’s solution. It shall identify respective responsibilities and completion dates for each task. The schedule shall allow the State and Contractor to monitor the entire process and address related issues. The schedule shall be an active document and shall be updated frequently to reflect changing circumstances and implementation progress.

1. Implementation Team Meetings

The Contractor shall schedule with the State weekly implementation team meetings. The Contractor shall prepare Meeting Agendas, shall facilitate the Team meetings, and shall provide Meeting Minutes after conclusion of the Team Meeting by the next business day.

1. Implementation Status Reports

The Contractor shall provide status reports to the State throughout the project’s implementation.

1. Training
	1. Implementation Training

At no additional cost to the State, the Contractor shall work with the State and Ordering Agencies to provide users an opportunity through a Kick-off event to learn about the program for best outcome of program usage. The Contractor may host other implementation and product shows around the State as well as additional vendor seminars and training at the direction of the State. As part of the Contractor’s duty to provide training at the direction of the State, the Contractor may be required to host training sessions via internet. The Contractor shall use reasonable best efforts to provide training as necessary to facilitate the goals of this Contract.

* 1. Post-Implementation Training

The Contractor shall continue to provide user training as needed after implementation pursuant to the training requirements of this Contract.

* 1. User Guides

The Contractor shall provide Roll-out Packets or User Guides to Ordering Agencies on how to best use the Contract and Punch-Out tool. The Contractor shall provide the User Guide documentation to the State Contract Manager for approval prior to release.

1. **Account Management and Customer Service**
2. Account Management Structure

The Contractor’s Dedicated Account Management Team shall include a Dedicated Account Manager, National Account Manager, and Customer Service Team. This team shall remain in place throughout the full contract term. The Contractor shall notify the State within 48 hours of notification of any staffing changes from proposed staffing as listed below. The State shall be provided the opportunity to approve or deny any new proposed personnel. The Contractor shall have a back-up plan in place at all times for all Account Management-related personnel and services. The Contractor shall communicate and maintain an up-to-date back-up plan for all Account Management Team members.

1. Dedicated Account Manager – The Account Manager shall serve as the Central Point of Contact and have the authority to negotiate the Contract between the State and Contractor. In addition, the Account Manager shall assist with account implementation and maintenance throughout the life of this Contract. Daily inquires such as product deliveries, missing orders, receiving an incorrect item, billing errors, and most customer-specific issues can be handled at the Dedicated Account Manger level. The Dedicated Account Manager has access to information, including, but not limited to, order status, delivery information, backorder information, contracted pricing, standard offering item availability, and product information. The Account Manager shall also actively market the products and services of this Contract to Governmental Entities and local schools under the K-12Indiana program. The Account Manager shall also work with the State Contract Manager on the details and management of the Savings Model.
2. National Account Manager – The National Account Manager shall be responsible for assisting with the account management and maintenance and work to ensure contract compliance.
3. Customer Service Team – The Customer Service Team shall be responsible for assisting the Ordering Agencies with any issues related to, but not limited to, product information, order status, delivery information, backorder information, contracted pricing, Market Basket item availability and ensuring service level compliance.
4. Quarterly Business Reviews (QBR)

The State and the Contractor shall agree upon the reporting model during the first 60 days of contract implementation. The State may request that the Contractor include, but is not limited to, Service Level Agreements, Key Performance Indicator (KPI), Performance Metrics, Transaction Usage, Product Substitutions, Pricing Audit Report, K-12 usage and rebate, additional reporting fields, etc. over the life of the Contract. The Contractor shall be responsible for presenting the agreed upon reporting model to the State at the Quarterly Business Review (QBR), as well as, anytime upon the State’s request. The Contractor shall work with the State Contract Manager to develop a Savings Model that reflects the actual savings over the life of the Contract. The Contractor shall report on the Savings Model at each QBR and shall provide updates upon request.

1. Service Level Agreements and Performance Metrics

The Contractor shall monitor and fulfill all Service Level Agreements and Performance Metrics. See **Exhibit A and B** for Service Levels and Performance Metrics.

1. Marketing and Promotions

The Contractor shall provide an on-going marketing campaign to market this Contract to all current Ordering Agencies, as well as potential users that fall under the categories listed in **Section 1(A) of this Contract**. The Contractor shall develop and present a Marketing Plan to the State of Indiana, and upon approval, the Contractor shall execute the Marketing Plan at no cost. The Contractor shall prepare marketing programs and materials. Such marketing tools shall include, but not limited to:

Mailers

Envelope inserts

Poster ads

Take-away cards

Media releases

Email blasts

Product Fairs

The Contractor shall supply sample marketing requests and proofs for approval prior to printing. The quality output shall be within the standards of the State of Indiana. The Contractor understands all marketing shall be provided at no cost to the State.

1. Problem Resolution

Problem escalation shall be handled using the Contractor’s resolution process as provided in the Technical proposal of RFP #xxx (see **Exhibit C**). The Contractor shall provide a copy of the Contractor’s most recent problem resolution process. In the event that the Contractor amends the problem resolution process, notification shall be sent to the State Account Manager and an electronic copy provided to the State. The State Contract Manager has the authority to contact the Contractor’s Account Manager directly for problem resolution if it is determined that the problem requires action from the Contractor that is swift and appropriate. Members of the Contractor’s Account Team shall arrive onsite at the Indiana Government Center in Indianapolis by the next business day, if necessary.

1. Disaster Recovery Plan

The Contractor shall provide a copy of the Contractor’s most recent disaster recovery and continuity of operations plan. The disaster recovery plan shall demonstrate that in the event of a catastrophe, the State’s inconvenience would be extremely minimal. The plan shall include, but not limit to, the process the State should follow to escalate issues. In the event that the Contractor amends the disaster recovery plan notification shall be sent to the State Account Manager and an electronic copy provided to the State. The Contractor shall provide copies of the disaster recovery plan to all Ordering Agencies upon request.

1. Customer Service Hours

The Contractor shall provide customer services for all Ordering Agencies locations Monday through Friday from 7:00AM to 5:00PM EST. This on-going support shall be provided via a toll free telephone number, email, and fax. The Contractor’s Dedicated Account Manager shall be accessible by phone for emergencies such as, but not limited to, disaster relief to provide assistance with customer service or orders that need to be placed.

1. Customer Service Response Time

The Contractor shall resolve all customer service issues within 48 hours of submission.

1. **Quality Assurance**

1. Warranty

Ordering Agencies are eligible to receive manufacturers’ warranties and the Contractor shall honor all manufacturers’ warranties and guarantees on entire catalog of products offered as part of this Contract. If the manufacturer offers an on-site warranty, those warranty services shall be passed on to the Ordering Agencies. If a product warranty extends beyond the term of this Contract, the Contractor shall agree to provide warranty services throughout the life of the warranty.

1. Product Recall Procedures

The Contractor shall provide recall notification, regardless of level, in writing to the State Contract Manager and each Ordering Agency through the most expedient method possible. The notices, at a minimum, shall include an item number, complete product description, delivery order number and disposition instructions.

The Contractor shall pick up, test, destroy or return recalled products to the manufacturer at no expense to the State. The Contractor shall issue replacement of product or credit for any product removed or recalled. Each Ordering Agency shall have the option of accepting either replacement product or credit in exchange for recalled/removed products.

1. Test Samples

Contractor shall supply sample products in sufficient quantities for testing purposes when reasonable and requested. The Contractor shall contact the State Account Manager in instances where the request for samples is believed to be unreasonable. The State Account Manager shall deem if the request is reasonable or unreasonable. Samples shall be provided at no expense to the Ordering Agency and delivered within 2 – 4 business days of request.

1. **Ordering**
2. Ways to Place an Order

The Contractor shall be able to receive orders by any of the following methods: phone, fax, in store via purchase order and confirming purchase order. The Contractor shall have internal controls, approved by the State of Indiana, to:

a) Ensure that only authorized individuals place orders

b) Verify any orders that appear to be abnormal

c) State Contract Manager has authorized purchase, from a State Agency, of any non-market basket or special request item.

1. Order Confirmation

An e-mail order confirmation shall be sent to the Ordering Agencies buyer within one (1) hour of Contractors receipt of purchase order. This order confirmation shall include the following information; but not limited to, Purchase Order Number, Order Date, Ship To Information, list of ordered items, list of shipped items, backordered items, and expected delivery date. In lieu of an email address, this confirmation shall be faxed. If the confirmation does not match the requested items, the Ordering Agency shall contact Customer Service.

1. Volume Discounts

The Contractor shall negotiate better pricing, while accomplishing the Ordering Agency’s needs, with an Ordering Agency on an individual basis at any time throughout this Contract period. If the Ordering Agency is a State Agency, prior written approval from the State Contract Manager is required.

1. **Shipping / Delivery**

The Contractor shall be able to deliver to all current and potential delivery sites within the State of Indiana, where some may include desktop delivery, and meet specified delivery requirements as well as delivery to all other Ordering Agency locations. This shall include desktop delivery within given State facilities. The Contractor shall receive a weekly report from the State to identify delivery site updates or new locations.

1. Delivery Timeframes

The Contractor shall use commercially reasonable efforts to ship products ordered by the State before 5:00 p.m. local time by the next business day after acceptance of Purchase Order for all catalog items. The Contractor shall use commercially reasonable efforts to maintain an on-time delivery percentage of 99%.

1. Shipping Charges

The Contractor agrees that all prices include shipping and handling fees required to provide delivery to all State and Ordering Agency locations unless specifically approved in writing by the State of Indiana Account Manager. The Contractor shall remain responsible for goods until the Ordering Agency takes possession.

1. Proof of Delivery

The Contractor shall provide proof of delivery for an order upon request from the Ordering Agency that shall include, but not limited to, the accepting individual’s name, signature, delivery date, delivery time, and packing list.

1. Backorders

In the event that a product is backordered, partial shipments or shipment is delayed for any reason, the Contractor shall notify the Ordering Agency of such delay in the following ways:

1. A backordered item(s), item number (s), and expected delivery date(s) shall be annotated on the email order confirmation.
2. A backordered item(s) shall be annotated on the packing list that the Ordering Agency receives with the order and include the expected delivery date(s).
3. Contractor’s online catalog/punch-out provides in-stock/backorder status.

The Contractor shall then work to fill the backorder. If the Contractor’s system is unable to fill a line, the Contractor’s local purchasing group shall source the backordered item. If an item is discontinued, or unavailable, the Contractor shall call the Ordering Agency and given a choice of canceling the order, or a like-for-like alternate.

1. Product Substitutions

Product substitution is not allowable unless pre-approved; in writing, by the State or Ordering Agency and only then may the item be shipped. The substituted item shall be of equal functionality and quality and shall not exceed the contract price of the back ordered or unavailable item. Contractor shall submit a quarterly report of all items that have been substituted.

1. **Installation**
	1. Tanks

The coordination of removal/replacement or purchase of existing tank not owned by the State, needs to be done between the previous holder of the contract for LP fuel and the new vendor, if applicable. Tanks cannot be replaced or removed until all existing fuel has been used.

In locations where tanks are not owned by the State Agency, vendor agrees to provide a tank at no cost.

1. **Billing/Payment**
	1. Invoice

The Contractor shall invoice the State only after items have been delivered prior to payment. The Contractor shall invoice the state only after completion of the work described in the purchase order/Contract, and as required below prior to any payment. The Contractor shall submit an invoice to the Ordering Agency’s Bill To Address. The Contractor’s invoice shall identify, at a minimum, the information listed below:

Invoice Number, Invoice Date, Ordering Agency’s Bill To Information, Ordering Agency’s Ship To Information, Business Unit, Purchase Order Number, Item Number, Item Description, Order Qty for each Item, Item Price, Invoice Total

* 1. Billing

The Contractor understands and agrees that the invoice shall;

Include only charges for products that have been shipped/fulfillment complete

Not include any items shipped separately or backordered item, which shall have a separate invoice for payment on the same Purchase Order

If multiple invoices are sent for the same Purchase Order, there shall be a note this is for partial payment

Not include sales tax or shipping charges

* 1. Payments

It shall be the responsibility of the "Bill To" agency to make payment. Any questions concerning payment should be addressed to the “Bill To” agency listed on the purchase order. If there is a dispute over charges on the State’s invoice, the State shall work with the Contractor’s assigned Account Manager to determine the issue and path of resolution.

The Contractor agrees that the timeframe for payment (and any discounts) begins when the “Bill To” agency is in receipt of a correct invoice that meets the minimum requirements stated above and products have been delivered in satisfactory condition.

The Contractor understands and agrees that the State shall not accept any responsibility for purchase orders issued by Governmental Entities, including K-12 entities or libraries.

1. **Returns**

Damaged Freight, Error in Shipment, Defective Items

The Contractor shall pay and arrange for all shipping and handling charges for items returned because of freight damage or error in shipment. Ordering Agencies shall be credited the full amount of all items returned. All credits shall be made to the account codes used to purchase the returned items. If the order had multiple account codes, the Ordering Agency shall instruct the Contractor to which code or codes the credit shall be assigned. The Contractor shall issue credit within fifteen (15) business days once item has been returned to Contractor’s warehouse.

1. **Reporting/Metrics**

The Contractor shall provide the State and Ordering Agencies monthly, quarterly, ad-hoc reporting, and report customization at no cost for the duration of the Contract. The standard reporting listed below shall be available to the State or Ordering Agency within 2 business days of the request unless the parties agree to a longer response period. Ad-hoc and customized reporting shall be provided within 5 business days.

1. Savings Model

The Contractor shall work with the State Contract Manager to develop a mutually agreed upon Savings Model, within ninety (90) days of final State signature, which reflects the actual savings over the life of this Contract. The Contractor shall report on the Savings Model at each QBR and shall provide updates upon request.

1. Usage Reports

The Contractor shall track all system and usage data to report at each QBR. The report shall include, but not limited to, Market Basket/ Non-Market Basket Indication, Recycled, MWBE product, Item Number, Item Description, Quantity, Unit of Measure, and Dollar Amount. The Contractor shall provide updates upon request.

1. Pricing Audit Report

The Contractor shall work with the State Contract Manager to develop a mutually agreed upon pricing audit report that reflects the number of transactions during a 3 month period, item price in the catalog at the time of purchase, and the price the Ordering Agency paid to show the difference. The Contractor shall provide this report at each QBR and shall provide updates upon request.

1. MWBE Subcontractor Compliance

The Contractor shall enter, on a monthly basis, payments into the Minority and Women’s Business Division online audit tool, to each Minority and Women’s Business subcontractor committed to in this Contract.

1. Smart Printing Agencies Initiative Reporting

The State has implemented an initiative to reduce cost and increase efficiency by optimizing the State’s document output within the day-to-day office environment. The Contractor shall report quarterly, through a usage report, the State’s purchases as it relates to toner, paper, maintenance kits, and printer items. The minimum data required including, but not limited to Ship Date, Agency Business Unit, Zip Code, Purchase Order Number, Item Number, Item Description, Quantity, and Total Cost of Order.

1. Greening the Government

The Contractor shall track and report quarterly the State’s environmental purchases, provide a list of all products with post-consumer recycled content, the average post consumer content by weight across all of the State’s purchases and the environmental benefits of recycled content purchases.

1. Indiana Economic Impact (IEI)

The Contractor shall track and report on a quarterly basis actual full time equivalent (FTE) employees that are Indiana residents specifically working on this Contract. The Contractor shall be held to the commitment specified at time of award, as detailed on the Indiana Economic Impact form in the RFP documents (see **Exhibit C**). FTE’s that shall be included in this report are employees working on this Contract ONLY. Employees working on this Contract, but not full time, shall be counted as a fraction or percent of one (1) employee. The Contractor shall work with the State to develop and provide the method of tracking IEI and detailed job descriptions within 90 days of final State signature.

1. **Miscellaneous Commitments**
2. Subcontracting

The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontract agreements are approved by the State, each shall contain all sections of this Contract. The Contractor shall be the Prime Contractor and shall be responsible for all work performed on this Contract.

1. Directed Sourcing

The Contractor and the State agree to work together to develop a mutually agreed upon directed source commitment program. A directed source provision is a contractual commitment whereby the Contractor is required to purchase and/or sub-contract for items specified from a preferred or directed source. The directed source commitment program shall include the following requirements:

1. Contractor agrees and understands that all approved State Use products (relating to the LP Fuel categories) will be available through work center QPAs or through the directed source provision.
2. Contractor agrees to sell approved items from work centers unless the work center (vendor) cannot meet the delivery and/or specifications, as requested. Approved items shall include those listed on current State Use Contracts.
3. State Use products shall be introduced on an annual basis and included with this directed source provision.
4. At the time an approved item is introduced and included with the directed source provision, the State and Contractor shall determine the appropriate mark-up, if any. Only items that are warehoused and delivered by the Contractor shall be subject to a mark-up. A fair market assessment shall be provided as justification for proposed mark-up and shall receive approval of the State Contract Manager before item is introduced through this Contract.

1. Retail (if Applicable)
2. Employee Purchase Program/Discount

Details of the Employee Purchase Program shall be listed on the State Personnel website so that all State Employees may take advantage of the program.

The Contractor shall extend this program to K-12, Library and other Governmental Entities and work directly with these entities for any set up that is required. These entities have direct approval on how/if this program is implemented.

1. Purchasing Card

The Contractor shall accept the State’s Purchasing Card (P-Card) as an optional form of payment, if advised by the State Contract Manager. The Contractor shall accept any credit card-user handling fees associated with the acceptance of the State’s Purchasing Card.

1. Consideration

Total Remuneration under this Contract shall not exceed $999,999.00. The Contractor agrees that all prices include delivery, shipping, service and administrative costs required to provide delivery to all State locations unless specifically approved, in writing, by the State.

**Pricing Terms**

1. Price Hold

All item prices shall remain set and unchanged for the initial twelve (12) month after the Contract effective date. The net effect of any price changes cannot increase the total cost to the State. After the initial 12 month period, price increases shall be approved by the State of Indiana on an annual basis with valid documentation from manufacturer on list price increase. Price increases per item shall continue to reflect the Contractor's original discount percentage or better. Price change will go into effect 30 days after approval documentation has been sent to Contractor from the State of Indiana.

**Pricing Errors and Overcharges**

For any pricing errors or overcharges discovered by either party, the Contractor shall reimburse the State in full for all overcharges.  Additionally, the Contractor shall pay to the State 10% of total purchase price of the accurately-priced items which had been invoiced at incorrect pricing, at the discretion of the State.  The State shall pay Market Basket Price less 10% if any Market Basket items are removed without notification forcing Non-Market Basket Substitutes to be purchased.  Any pricing errors shall be corrected by the next business day of notification to the Contractor of the error.  The Contractor shall provide a credit to the Ordering Agency for pricing errors or penalty fees. In the event that multiple agencies are involved, credit distribution shall be determined at the discretion of IDOA.

1. Term

This Contract shall be effective for a period of two years. It shall commence on \_\_\_\_\_\_\_, 2019 and shall remain in effect through \_\_\_\_\_\_\_\_, 2021.

1. Access to Records

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.

1. Assignment; Successors

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. 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.

1. Assignment of Antitrust Claims

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.

1. 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.

The State considers the Contractor to be a “Contractor” under 2 C.F.R. 200.330 for purposes of this Contract. However, 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.

1. 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.

1. 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.

1. Compliance with Laws
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. As required by IC §5-22-3-7:
10. The Contractor and any principals of the Contractor certify that:
11. 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]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
12. 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.
13. 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,

(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

(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.

1. 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.

1. 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.

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.

1. Continuity of Services

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:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. 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.

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.

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).

1. Debarment and Suspension

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.

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.

1. 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.

1. Disputes
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. This paragraph shall not be construed to abrogate provisions of Ind. Code 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 Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.
8. 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.

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:

1. 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;
2. 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;
3. 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;
4. 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;
5. 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
6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
7. 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:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

1. 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

1. Funding Cancellation

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.

1. 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.

1. 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.

1. 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 shall not provide such indemnification to the Contractor.

1. 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. Information Technology Enterprise Architecture Requirements

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at http://iot.in.gov/architecture/. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

1. Insurance
2. The Contractor and their 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:
3. 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.
4. Automobile liability for owned, non-owned and hired autos with minimum liability limits of $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.
5. 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.
6. Fiduciary Liability is required 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. These contractors face potential claims for mismanagement brought by plan members.  Limits should be no less than $700,000 per cause of action and $5,000,000 per occurrence.
7. Valuable Papers coverage, available under an Inland Marine policy, is required when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement.   Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.
8. The Contractor shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.
9. 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.
10. The Contractor's insurance coverage must meet the following additional requirements:
11. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
12. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
13. 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.
14. 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.
15. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.
16. 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.
17. Key Person(s)
18. 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.
19. 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.

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.

Key person(s) to this Contract is/are xxx.

1. 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.

1. 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.

1. Minority and Women's Business Enterprises Compliance

Award of this Contract was based, in part, on the MBE/WBE participation plan**.** The following certified MBE or WBE subcontractors will be participating in this Contract:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| MBE/WBE | PHONE | COMPANY NAME | SCOPE OF PRODUCTS and/or SERVICES | UTILIZATION DATE | PERCENT |
| None |  |  |  |  | 0.000 |

A copy of each subcontractor agreement must be submitted to IDOA’s MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA’s MBE/WBE Division before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to MBE/WBE Division subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as “Pay Audit.” MBE/WBE Division subcontractor payments shall also be reported to the Division as reasonably requested and in a format to be determined by Division.

1. Nondiscrimination

Pursuant to the Indiana Civil Rights Law, specifically including 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"). 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.

The State is a recipient of federal funds, and therefore, where applicable, Contractor 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.

1. Notice to Parties

Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised.

Notices to the State shall be sent to:

 Tanner Ballinger

 Indiana Department of Adminisitration

 402 W. Washington St.

 Indianapolis, IN 46204

Notices to the Contractor shall be sent to:

xxx

xxx

xxx

xxx, xx xxx

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.

1. 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#xxx, (4) Contractor's response to RFP#xxx, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

1. Ownership of Documents and Materials
2. 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.
3. 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.
4. Payments
5. All payments shall be made 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.
6. The State Budget Agency and the Contractor acknowledge that Contractor is being paid in advance for the maintenance of equipment and / or software. Pursuant to IC §4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required 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.
7. 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 § 34-52-2-3.

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.

1. 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.

1. Public Record

The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

1. 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.

1. 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.

1. 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.

1. 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.

1. Termination for Convenience

This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration 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 the Indiana Department of Administration shall be deemed to be a party to this agreement 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.

1. Termination for Default
2. 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:

1. 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;

2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;

3. Make progress so as to endanger performance of this Contract; or

4. Perform any of the other provisions of this Contract.

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.

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.

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.

E. The State reserves the right to allow or disallow the Contractors participation in future solicitation opportunities, as a prime or subcontractor, for a period of two (2) years from the date of the notice of termination. A letter from the Commissioner of the Indiana Department of Administration shall be required to participate on future solicitations within the two (2) year time frame.

1. Travel

No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

1. Indiana Veteran's Business Enterprise Compliance.

Award of this Contract was based, in part, on the Indiana Veteran’s Business Enterprise (“IVBE”) participation plan. The following IVBE subcontractors will be participating in this Contract:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| IVB | PHONE | COMPANY NAME | SCOPE OF PRODUCTS and/or SERVICES | UTILIZATION DATE | PERCENT |
| None |  |  |  |  | 0.000 |

A copy of each subcontractor agreement shall be submitted to IDOA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA before changing the IVBE participation plan submitted in connection with this Contract.

The Contractor shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as “Pay Audit.” IVBE subcontractor payments shall also be reported to IDOA as reasonably requested and in a format to be determined by IDOA.

1. 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.

1. 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.

1. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified, or changed the State's Boilerplate clauses (as defined in the *2016* OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

45: Termination for Default

1. Non-Collusion and Acceptance
2. 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.**
3. **Agreement to Use Electronic Signatures**
4. 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>
5. **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. VENDOR Indiana Department of Administration
2. By: By:
3. Title: Title:
4. Date: Date:

|  |  |
| --- | --- |
| Electronically Approved by: Department of AdministrationBy: (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 AgencyBy: (for)Jason D.Dudich, 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 GeneralBy: (for)Curtis T. Hill, Jr., Attorney General*Refer to Electronic Approval History found after the final page of the Executed Contract for details.* |

**Exhibit A – Service Level Agreements and Key Performance Indicator**

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.

**Service Level Agreement (SLA)**

The Service Level agreements (SLA) are based on agreed upon service levels that are tracked over the course of the contractual term. The Service Level Agreements are created for the purpose to monitor the performance of the Contractor and the overall contractual agreement. These SLA(s) are represented to identify both qualitative and quantitative information. The Contractor shall monitor and fulfill all associated Service Levels through continuous tracking, Key Performance Indicator Surveys, and State Account Management interaction. These Service Level Agreements shall then be directly evaluated through Performance Metrics in **Exhibit B**. On a quarterly basis, the Contractor shall identify the actual outcome of the Service Level Agreements listed below and supply original supportive documentation for all Service Level Agreements and Performance Metrics. The Contractor shall tabulate the actual Service Level Agreements outcome and present the actual results during each affiliated Quarterly Business Review (QBR). The Contractor shall not round up on any numerical numbers, percentages, etc. The data shall not be tabulated as an average; instead the data must be represented as actual statistical information.

The Service Level Agreements are set up with the combination of the following:

1. Service Level Agreement – Contractor Score Card

The Contractor Score Card is a specific table to the agreement for Contractor performance in various areas. This Contractor Score Card is tracked daily, while reported on a quarterly basis, unless otherwise requested by the State Account Manager. The Contractor is encouraged to utilize automated processes to generate data and reports to ensure utmost authenticity. The Contractor shall not round up on any numerical numbers, percentages, etc. See Table titled: **Service Level Agreement – Contractor Score Card.**

1. Service Level Agreement - Key Performance Indicator (KPI)

A Key Performance Indicator (KPI) is a specific survey submitted to the key stakeholders of the Ordering Agencies. Each Ordering Agency is required to complete the KPI by someone, known as a key stakeholder that utilizes the agreement on a continuous basis and answers the survey on behalf of the Ordering Agency. The intent of the KPI is to obtain real, continuous feedback from Ordering Agencies on the Contractor’s management performance, the Contractor’s overall performance, and other identified factors are substance of the KPI. The State shall supply contact information for the key stakeholders to the Contractor. The Contractor shall then reach out to the key stakeholders of the Ordering Agency on a quarterly basis to ask the key stakeholder of the Ordering Agency to complete the KPI and return. The key stakeholder of the Ordering Agency shall complete the KPI on behalf of the Ordering Agency, and provide their signed off response to the Contractor. The Contractor shall then compute and report on the results in the Quarterly Business Review. The Contractor shall not round up on any numerical numbers, percentages, etc. The Contractor shall provide all original, supportive documentation to the State Account Manager. See KPI titled: **Service Level Agreement** - **Key Performance Indicator.**

**Service Level Agreement – Contractor Score Card**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| # | Service Level Agreement | Performance Standard | Performance Target | Description | Calculation | Frequency of Review |
| 1 | Delivery Cycle Time Turnaround | (3) Business Day | Time Agreed Upon with Ordering Entity | Calculation of delivery from the date of order receipt to the date when the product is physically onsite with the customer. | Order date and timestamp compared to the proof of delivery at Ordering Agency location. | Quarterly |
| 2 | Report Turnaround | Time Agreed Upon with State Contract Manager | (3) Business Day | Contractor must submit defined reports to State or requesting using entity within three (3) business days. | Completion of reports provided according to number of business days taken to provide.  | Quarterly |
| 3 | Ad hoc Report Turnaround | Time Agreed Upon with State Contract Manager | (5) Business Days | Contractor must submit entity-requested ad hoc/special reports to State or requesting using entity within five (5) business days. | Completion of reports provided according to number of business days taken to provide.  | Quarterly |
| 4 | Problem Resolution Time | (2) Business Days | (1) Business Days | Customer inquiry resolution time shall be resolved within two (2) business days with the Contractor’s Customer Service Team. | From the time service inquiry is opened with Contractor’s Customer Service Team to when the inquiry is closed. | Quarterly |
| 5 | Invoice Correction Turnaround | (3) Business Day from error identified | (2) Business days from error identified | Invoices must be accurate. The accuracy of the information provided on the using entity invoice. New invoice must be received at Bill-To Address within three (3) business days from when the error was identified. | Provide reporting model to reflect using entity notification date of invoice error less the date from Contractor supplying corrected invoice. A sample of Before and After Invoice documentation to be provided for validation purposes, upon request by the State. | Quarterly |

**Service Level Agreement - Key Performance Indicator**

|  |  |
| --- | --- |
| ACCOUNT SERVICE PERFORMANCE SCORECARD | **-Vendor- – LP Fuel** |
| **-Vendor-** | Quarter / Period of Review: |
| Site Scorecard: (Enter Using Agency location here) | Date Review Completed: |
| CLIENT SATISFACTION |  |
| CLIENT SERVICE REVIEW PROCESS (SEE SCALE BELOW) Insert check in box | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| 1. How consistent and reliable is the service VENDOR is providing?
 |  |  |  |  |  |  |  |
| 1. How responsive is VENDOR service on issues, when applicable?
 |  |  |  |  |  |  |  |
| 1. How would you rate the professionalism of the employees at VENDOR?
 |  |  |  |  |  |  |  |
| 1. How would you rate the VENDOR agreement product delivery?
 |  |  |  |  |  |  |  |
| 1. How would you rate the VENDOR agreement ordering process for ease of use?
 |  |  |  |  |  |  |  |
| 1. How would you rate the VENDOR agreement Invoice Accuracy?
 |  |  |  |  |  |  |  |
| 1. Overall, are you satisfied with the employees that support the VENDOR agreement?
 |  |  |  |  |  |  |  |
| 1. How likely are you to recommend the VENDOR agreement to other departments/people you know?
 |  |  |  |  |  |  |  |
| 7Always Exceeds Expectations | 6Frequently Exceeds Expectations | 5Sometimes Exceeds Expectations | 4Meets Expectations | 3Sometimes Meets Expectations | 2Rarely Meets Expectations | 1Never Meets Expectations |
|  |
| Range |  | On Target |  | Below Expectation |  | Far Below Expectation |
| CATEGORY | RANGE | SITE PERFORMANCE |
|  |  |  |  | RESULTS / COMMENTS |
|  |  |

|  |  |
| --- | --- |
| CONTRACT PERFORMANCE |  |
| **FINANCIAL PERFORMANCE** |  |  |  | Comments: |
| # of Billing discrepancies: ( # ) |  |  |  |  |
| **TECHNICAL/CS PERFORMANCE** |  |  |  | Comments: |
| % of on-time deliveries |  |
| **INCIDENT REPORTING** |  |  |  | Comments:  |
| # of major incidents reported ( # ) |  |  |  |  |
| Reviewed by: |  | Submitted by: |  |
| Agency Representative | Date | VENDOR | Date |

**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.

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: The Contractor delivers the ordered commodities by the scheduled delivery date.

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

Calculation: Number of days that an order is delivered 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 date. There is, however, a five (5) calendar day grace period after the approved delivery date. If for any late order, the commodity is still not delivered after grace period ends, the Invoice Credit calculation will be triggered and will include the days of the grace period.

* **Metric 2: Order Accuracy**

Goal: Orders are filled correctly; commodities meet the order specifications.

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 100% of the time.

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 commodity 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 every third month, documenting the degree to which the Contractor met the performance metrics outlined above over the past quarter. 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 (K)** 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.