

## PROFESSIONAL SERVICES CONTRACT

EDS # \_\_\_\_\_

This Contract (“this Contract”), entered into by and between \_\_\_\_\_ (the “State”) and \_\_\_\_\_ (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

**1. Duties of Contractor.** The Contractor shall perform all commitments and requirements of this Contract, including providing all services described below (collectively the “Services”), in an effective, timely, and accurate manner and that meet or exceed all required performance standards and Service Levels, including:

- (a) Implementation Services as defined in Section 56;
- (b) Ongoing Services as defined in Section 51, including:
  - (i) Solution Maintenance Services;
  - (ii) Solution Support Services;
  - (iii) Solution Upgrade Services; and
  - (iv) Ongoing Improvement Services;
- (d) Exit Assistance Services as defined in Section 50;
- (e) any other services provided or to be provided by Contractor under this Contract (including without limitation the requirements in the RFP and RFP Response), as the same may be amended from time to time in accordance with the change control procedure; and
- (f) any tasks or activities necessary, incidental, or which may reasonably be inferred, for the performance of such services.

**2. Consideration.** Total remuneration under this Contract shall not exceed \$ \_\_\_\_\_.

**3. Term.** This Contract shall be effective for a period of \_\_\_\_\_. It shall commence on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_.

**4. 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.

**5. 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.

**6. 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.

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

The State considers the Contractor to be a “Contractor” under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a “subrecipient” and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

**8. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

**9. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

#### **10. Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General’s website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) 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

(B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) 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.

**11. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and

regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

**12. Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

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.

### **13. 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).

### **14. 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.

**15. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

**16. Disputes.**

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. 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.

**17. Drug-Free Workplace Certification.** As required by Executive 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:

- A. 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;
- B. 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;
- C. 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;
- D. 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;
- E. 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
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**18. Employment Eligibility Verification.** As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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.

**19. Employment Option.** If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

**20. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. 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.

**22. Governing Law.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

**23. HIPAA Compliance.** If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

**24. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

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

**26. 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.

## **27. Insurance.**

A. 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:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits 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.
3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.
4. Fiduciary Liability 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.

5. 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.
6. The Contractor shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.
7. 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.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

## **28. Key Person(s).**

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

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 \_\_\_\_\_

**29. 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.

**30. 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.

**31. 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

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.

**32. 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.

**33. 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.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

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B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

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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.

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

**35. Ownership of Documents and Materials.**

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor.

Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

### **36. Payments.**

A. All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.

B. The State Budget Agency and the Contractor acknowledge that if the 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.

**37. 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.

**38. 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.

**39. 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.

**40. 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.

**41. 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.

**42. 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.

**43. 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.

**44. Termination for Convenience.** This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason,

the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this 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.

**45. Termination for Default.**

- A. With the provision of thirty (30) days’ notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:
  - 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.

**46. 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.

**47. 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:

VBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT
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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.

**48. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

**49. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

**50. Exit Assistance Services.** Contractor shall provide Exit Assistance Services so as to enable an orderly and efficient transfer to any new Contractor or the State in a manner which will minimize disruption to the State on termination or discontinuance of any or all of the Services. The Exit Assistance Services include those services or requirements described in this Section, as well as other portions of this Contract including the RFP and RFP Response.

The following are the key definitions pertaining to Exit Assistance:

- Exit Assistance Notice: The notice by the State of intent to exit and specifying the Exit Assistance Period and required Exit Assistance Services;
- Exit Assistance Period: The period specified in the Exit Assistance Notice during which Contractor shall provide the Exit Assistance Services subject to this Contract;
- Exit Assistance Services: The Services to be provided by Contractor to the State pursuant to the Exit Assistance Notice and Exit Plan to transfer the Services to the State and/or a new Contractor;
- Exit Plan: The plan to facilitate the effective transfer of Services following termination from Contractor to the State and/or a new Contractor.

No later than twelve (12) months prior to the expiration of this Contract or as early as is practical, Contractor and the State will discuss and develop an Exit Plan, setting forth the respective tasks to be accomplished by Contractor and the State in connection with the termination transition and migration and a schedule pursuant to which such tasks are to be completed and identifying whether Contractor or the State is responsible for performing and/or paying the cost related to each task. Contractor will provide reasonable cooperation with the employees of the State who will be assuming responsibility for the replacement services following the transition and migration.

Contractor shall at all times during this Contract and the Exit Assistance Period, comply with the provisions of an Exit Plan that may be developed and provide the Exit Assistance Services to the. The Exit Plan, unless agreed otherwise in writing, shall be executed upon the State's request each time any of the Services expire or are terminated. Except as agreed otherwise in the Exit Plan, the Services provided during the Exit Assistance Period shall be at the same levels as when the Services were provided during the term of this Contract.

The Exit Assistance Services will be provided for a reasonable period of time, which will be for the remaining term of this Contract and twelve (12) consecutive months beyond the expiration of the term of this Contract after termination date unless the State requests a shorter period in the Exit Assistance Notice. The State will cooperate in good faith with Contractor in connection with Contractor's obligations under this Section and will perform its obligations under the Exit Plan. If the Exit Assistance Services extend beyond the expiration of the term of this Contract or the effective date of termination of this Contract, the provisions of this Contract will remain in effect for the duration of the Exit Assistance Services and will apply to all activities conducted by the Contractor during such Exit Assistance Period. Any additional expenses to be incurred in connection with the Exit Assistance Services which Contractor intends to seek reimbursement for must be approved in advance by the State.

For so long as this Contract remains in effect and during the Exit Assistance Period, the State will pay to Contractor on a monthly basis the appropriate charges set forth in this Contract, as well as the fee for the Exit Assistance Services, as mutually agreed in writing. If the Contract is terminated due to the State's failure to timely pay undisputed amounts, then Contractor's obligation to perform Exit Assistance Services will be conditioned upon payment by the State in advance of estimated monthly amounts for the Exit Assistance Services. If the Exit Assistance Services provided by Contractor under this Contract requires personnel or other resources in excess of those resources then being provided by Contractor under this Contract, the State will pay Contractor for such personnel or additional resources at Contractor's then current billing rates. Notwithstanding anything to the contrary in this Contract, all charges to be paid by the State to Contractor, including Charges for the Exit Assistance Services, will be paid on a monthly basis.

**51. Ongoing Services:** Ongoing Services are subject to the Service Levels and include Solution Maintenance Services, Solution Support Services and Solution Upgrade Services, each as defined below. The Ongoing Services include those services or requirements described in this Section as well as other portions of this Contract including the RFP and RFP Response.

**Solution Maintenance Services:** Recurring products and services, for the implementation period and 10 years following final implementation, that are required to enable the Contractor to a) correct system errors, faults or bugs, b) improve performance, c) provide federally mandated enhancements and d) provide community based enhancements. These products and services include, but are not limited to, help desk, advisory, consulting and development services.

**Solution Support Services:** Recurring products and services, for the implementation period and 10 years following final implementation that are required to enable the Contractor to provide a sufficient amount of support for the State to address ongoing State driven enhancements including normal annual legislative driven enhancements. These products and services may include, but are not limited to, a dedicated State support team and on-demand support from key Contractor resources.

**Solution Upgrade Services:** Recurring products and services, for the implementation period and 10 years following final implementation, that are required to provide all solution related services to fully implement all upgrades (major and minor) on a schedule mutually agreed by the State and the Contractor. Contractor commits to such upgrading within 12 months of upgrade availability.

Contractor warrants it shall discharge its Ongoing Services obligations under the Contract in a proper, timely and efficient manner, using that standard of care, skill, diligence and foresight that would be expected of an expert and experienced Contractor delivering services wholly similar or partially similar to the Services.

As part of Ongoing Services, Contractor will proactively identify opportunities to implement and promptly notify the State of new or emerging technologies, processes, methods and procedures that will be advantageous to the State (“Ongoing Improvement Services”). If requested by the State, Contractor shall propose to the State such change requests as may be required in order to implement a Service Improvement.

**52. Security Requirements:** The State has adopted a FISMA-based security requirement for its operations and systems due to the high need to keep the State’s data confidential, available, and with high integrity. The Department of Revenue systems are classified as moderate impact systems under the Federal Information Processing Standard (FIPS) 200 risk classification model. The State uses the highest intolerance for risk in its assessment of the system and thus will insist that all security controls appropriate for a moderate-impact system be implemented. The State requires that the Contractor be compliant with such a security scheme for its system and operations because the State will be transmitting its data to the Contractor. The State will not accept any Contractor solution that does not meet the State’s security requirements as specified in the NIST and IRS documents and the DOR’s system requirements as itemized in the RFP Attachments.

The State will evaluate all system security models based on the State’s reading of FISMA, NIST SP800-53 (Rev 4), IRS Publication 1075 (issued September 2016) and security best practices. Contractor agrees to abide by the State’s interpretations of these requirements. The Contractor further agrees that new or different requirements specified in later versions of these standards can be incorporated into this contract at the State’s request.

The State requires each system to provide its own data security for handling input and output by providing native encryption functions that utilize a FIPS 140-2 validated encryption algorithm.

The State utilizes the Defense Information Security Agency’s (DISA – [www.disa.mil](http://www.disa.mil)) Specific Technology Implementation Guides (STIGs) as an objective way to evaluate compliance with our security requirements. The STIGs specify secure configurations for the technology stack and secure designs for system architecture. The implemented system must operate correctly with all requisite STIGs applied to the infrastructure and application components before customization and configuration can begin. The final release candidate for each iteration of the system must maintain its adherence to the STIGs before it can be certified for production. The State will withhold payment due without late charges or penalties at these milestones until the system is certified.

The IRS requires that Pub 1075 Exhibit 7 be incorporated into the final contract in its complete form and unchanged by the State and Contractor. Contractor agrees to the inclusion of these terms.

**53. Solution Escrow:** Upon the State’s request, Contractor shall at its cost and expense deposit, maintain and update Source Code Materials to the Contractor software designated by the State with a third party escrow agent selected by the State to be held, released to the State, and licensed to the State in accordance



with an escrow agreement. Contractor will update the Source Code Materials escrowed with the third party escrow agent to correspond with each subsequent major and minor release of the applicable Contractor Software.

**54. Solution License:** Contractor hereby grants to the State a royalty-free, non-exclusive license to use Contractor Intellectual Property Rights to use the Solution, Services and all Deliverables during the term of the Contract and the Exit Assistance Period.

**55. Communications and Announcements:** Contractor shall not make any press release, public announcement, advertisement, promotional material or other form of publicity whatsoever concerning or referring to the State or the existence of subject matter of the Contract without the prior written approval of the State.

The provisions relating to Communications and Announcements shall continue to apply after termination.

## **56. Implementation Services:**

Contractor shall provide the State with the Implementation Services in connection with the implementation of the Solution. The scope and contractor responsibilities for the Implementation Services will encompass, at minimum, the following services and any other services required in the RFP and RFP Proposal:

### **56.1. Project Management Services**

Contractor will lead a structured delivery methodology that includes project initiation, project organization, budget and scope management, cost and schedule management, change control, quality assurance, stakeholder communication, issues management, risk management and status reporting.

### **56.2. Base Solution Installation Services**

Contractor will lead the construction, implementation, configuration and validation of the Contractor Solution, including all proposed environments (e.g. development, testing, training, staging and production) to enable implementation activities requiring such environments to begin.

Contractor will install their system in the State's Protected Zone computing environment with such configurations that it is free of any category 1 (CAT-1) security findings. Any category 2 (CAT-2) security findings must be incorporated into a Security Acceptance Test Plan before any subsequent work may be done on the project. A CAT-1 finding reveals a security vulnerability the exploitation of which will compromise the confidentiality, availability, and/or integrity of the system and its data. A CAT-2 finding reveals a security vulnerability the exploitation of which may compromise the confidentiality, availability, and/or integrity of the system and its data. The Security Acceptance Test Plan consists of the tasks and priorities to monitor the progress of remediation of the CAT-2 findings and to prevent the reemergence of CAT-1 findings. The Security Acceptance Test Plan must be completed before the system can be certified for production with live taxpayer data.

### **56.3. Solution Configuration and Customization Services**

Contractor will lead the configuration, validation and implementation of the Contractor Solution in order to enable successful implementation activities including testing, training and go-live activities.

#### **56.4. Testing Services**

Contractor will provide appropriate Testing Services to ensure services and changes are ready for deployment and implementation within the timelines agreed with the State. Contractor will provide sample test scripts which Contractor and State will utilize to build final test scripts that articulate the State business process. Contractor will provide a coordinator/testing manager and subject matter experts (SMEs) to answer questions during the State test script execution. Contractor will be responsible for all testing, with the exception of user acceptance testing, of the Services prior to Go-Live and include these tasks in the Implementation Plan. Testing will include, integration testing, unit testing, system testing, functional testing, performance testing, load testing, stress testing, regression testing relevant network and connectivity testing. Contractor will make available testing environments to the same configuration and settings as the Solution to be used in production to ensure training is delivered in a system that mirrors the production systems. Testing Environments will be subject to Service Levels and the Security Acceptance Test Plan

#### **56.5. Training Services**

Contractor will deliver Training Services to ensure the Solution, State processes and State personnel are fully prepared for deployment and implementation within timelines proposed to the State. Contractor will provide train-the-trainer and train-the-specialist classes according to training schedule.

Contractor will make available training environments to the same configuration and settings as the Solution to be used in production to ensure training is delivered in a system that mirrors the production systems. Training environments will be subject to Service Levels and the Security Acceptance Test Plan.

#### **56.6. Data Conversion Services**

Contractor will lead the successful conversion of State data from the current system provider to the Contractor System including providing the tools and techniques to efficiently execute the conversion of data.

#### **56.7. Go-Live Disruption Minimization Services**

Contractor will supply Implementation Services in a manner to help minimize the disruption to the State business of processing tax revenue during Go-Live.

#### **56.8. Steering Committee Support Services**

Contractor will participate in a project steering committee or equivalent with ability to make decisions to allocate additional Contractor resources.

#### **56.9. IV&V Support Services**

Contractor will fully support, not lead, the Independent Verification and Validation efforts of the State including appropriate meetings and reporting.

#### **56.10. Organizational Change Management Support Services**

Contractor will fully support, not lead, the change management efforts of the State including communication and messaging, change assessment, organization or operational redesign, and organizational go-live support.

#### **56.11. Project Transition Services**

Contractor will perform the Implementation Services in a manner to ensure smooth system implementation and adoption.

## 57. Service Levels:

Contractor shall provide the Contractor Solution, Implementation Services and Ongoing Services at or above the Service Levels defined in this Section and committed in the RFP Proposal. Where conflicts arise, this Section will take precedence.

### 57.1. Overview

- a. This Service Level Agreement (the "**SLA**") describes the terms and conditions generally applicable to all Service Levels relating to the Contractor Solution utilized by the State and Contractor's performance of the Services under the Agreement.
- b. The Service Level commitments with respect to the Contractor Solution and Services are set forth below (referred to collectively as the "**Service Levels**").
- c. This SLA shall apply to production and non-production environments.
- d. The Core Functionality related Service Levels are measured only for Solution environments. The Service Levels do not apply to transactions once they have left the Solution environment for third party applications / systems or vendors.
- e. Contractor's failure to achieve a Service Level will result in a Service Credit as outlined in this SLA.
- f. The Service Levels set forth in this SLA will commence on base installation of each environment. Calculation of the below Service Credits will begin on the first day of the calendar month falling at least thirty (30) days after the base installation of each environment.
- g. Any changes to the Service Levels or this Service Level Agreement requested by either party are subject to the Change Control Procedure.
- h. The Service Levels set forth in this SLA for Core Functionalities are intended to cover all material capabilities identified in the RFP and RFP Proposal which are part of this agreement. If the parties subsequently determine a capability material to the State's operations is not being measured, they will work together in good faith to determine an appropriate method to measure such capability.

### 57.2. Key Definitions

For purposes of this Section, the following terms shall have the meanings set forth below:

- a. "**Core Functionality**" means the following individual core capabilities of the Contractor Solution including; i) Returns Processing, ii) Account Maintenance, iii) Revenue Accounting, iv) Collections, v) Process Payments, vi) Process Disbursements, vii) Customer Service and viii) Online Portal Services.
- b. "**Contractor Solution**" or "**Solution**" means all core system products, capabilities, licenses and authorizations required to meet the requirements committed by the Contractor in the RFP Proposal for Implementation Services and Ongoing Services.
- c. "**Measurement Period**" means the total minutes available in the calendar month being measured, minus Scheduled Maintenance time.

- d. **“Resolution”** or **“Resolve”** means, the removal or other remediation of the malfunction without causing loss of functionality such that the functionality is able to meet the applicable Service Level and contractual requirements under the Agreement in all material respects. Resolution may consist of a short term service restoration that may consist of a fallback, patch, or other means that may be temporary in nature until such time that a permanent resolution can be achieved.
- e. **“Response Time”** is the period measured for a Core Functionality from the time a request is received by the Contractor Solution and the time a response is provided by the Contractor Solution.
- f. **“Total Ongoing Services Fee”** is the total annual Recurring Products And Services Total proposed in the Cost Proposal Template for the given year, divided by 12.
- g. **“Selective Entries”** are the minimally required set of entries automatically generated by Contractor, via robotic processes, that follow the critical path of a typical user entry to successfully execute a Core Functionality.
- h. **“Service Level Failure”** means a failure of Contractor to meet a Service Level.

### 57.3. Incident Severity Levels

During the term of this Contract, Contractor will provide the services necessary to remedy any Severity Level 1, Severity Level 2 or major impact Severity Level 3 incidents in the Solution and to acknowledge, evaluate and record any other incidents in the Solution. Fixes for Severity Level 3 and Severity Level 4 incidents will be prioritized after all Severity Level 1 and Severity Level 2 incidents are remedied. Support Services will commence promptly after the State has identified an incident with the Solution and has notified Contractor’s support desk of the incident.

During the Support Term, the State will have access to a Contractor support desk twenty-four (24) hours a day, seven (7) days a week, accessible via email and/or telephone support. The support desk will be responsible for facilitating the communication and resolution of the incident.

A support desk will be responsible for logging and tracking incidents after they have been reported by the State, contacting the State’s, if deemed necessary, to confirm receipt of an incident report and determining the priority level of the incident. Severity levels will be determined as follows:

Severity Level 1 Incident -	A complete loss of service for a Core Functionality. The Core Functionality is inoperable.
Severity Level 2 Incident -	A severe loss of service of a Core Functionality. Incident affects a critical business function, however, use of the Core Functionality is restricted.
Severity Level 3 Incident -	A loss of service for a Core Functionality. A workaround is available permitting some use of the Core Functionality’s capability.
Severity Level 4 Incident -	Problem is minor and no loss of service for Core Functionality.

### 57.4. Exceptions to Service Levels

Contractor shall be excused for its failure to meet any Service Level, and no Service Credit shall be provided, if such failure is attributable to any of the following:

- a. The State's failure to perform its obligations under the Agreement that affects the performance of the Contractor Solution or hinders Contractor's performance of the Services, including failure caused by the State Systems; or
- b. The performance of a third party not under Contractor's control, but excluding Contractor subcontractors; or
- c. Unforeseen material volumes increases (i.e., in excess of double the State's normal volumes) based on changes in the State's business operations, processes or methodology for which the State has failed to give Contractor sufficient advance written notice; or
- d. For Services that are dependent on a data feed from a State System or a third party system that the State has contracted for, a faulty, bad or incomplete data feed from such State System or third party system.

However, in each case, Contractor must (i) notify the State in writing reasonably promptly of becoming aware of the issue and its impact on the Service Levels, (ii) take commercially reasonable efforts to mitigate the impact of the State's or the Third Party's acts or omissions and (iii) continue to otherwise perform in accordance with this Agreement. If Contractor claims under this exception in a situation where Service Credit would otherwise apply, the State may request that Contractor provide substantiation of the excused performance.

#### **57.5. Scheduled Maintenance**

Contractor may schedule Contractor Solution maintenance and/or modifications, Contractor Solution hardware maintenance or upgrades, facility modification and/or similar reasons ("**Scheduled Maintenance**"). Scheduled Maintenance shall occur between 6 a.m. and 10 a.m. United States Eastern Time on Sundays, and must be coordinated with State IT. Contractor will give the State at least seven (7) days advance written notice of Scheduled Maintenance and its anticipated duration; provided, however, when Scheduled Maintenance is required to resolve urgent operational requirements, Contractor will provide a minimum of twenty-four (24) hours advance written notice of the Scheduled Downtime and its anticipated duration. Any downtime that does not meet the conditions for Scheduled Downtime shall be considered unscheduled downtime and shall be counted against Contractor's obligations to meet its Service Levels. In no event will the total of all Scheduled Downtime exceed forty eight (48) hours per calendar year.

**Contractor will maintain advanced knowledge of upcoming Zero Day Vulnerability Patch announcements from vendors supplying the Contractor system's Technology Stack. Contractor will also monitor reports from the National Vulnerabilities Database for any non-proprietary technology used in the system. Any vulnerability resulting in a CAT-1 security finding announced via either channel must have a repair available for implementation in the State's environments by Zero Day plus 30 days if the system is incapable for functioning correctly following application of the Zero Day patch.**

#### **57.6. Monitoring and Reports**

Contractor will retain monitoring systems and/or tools for monitoring the Service Levels including automated measurement systems utilizing Synthetic Transactions. The data and

detailed supporting information contained within SLA reports shall be considered confidential information. Contractor will provide the State with the reports described below in connection with the Services.

- a. Service Level Reporting - By the fifteenth (15th) day of each month, Contractor will provide the State with a performance report describing Contractor’s actual performance in comparison to the Service Levels for the prior month.
- b. Incident and Root Cause Analysis Reporting – Within 3 days of a Severity Level 1 Incident, Contractor will provide a Root Cause Analysis and details of steps that will be taken in order to prevent a reoccurrence of similar issues for all Severity Level 1 Incidents. As soon as reasonably possible following the occurrence of a Severity Level 1 Incident, a Critical Incident Report (the “CIR”) will be provided containing a description of the Incident, date and timestamp, outage duration, root cause of incident, resolution/recovery actions taken and steps that will be taken to prevent a reoccurrence of similar issues.

**57.7. Service Levels**

Service Level Name	Service Level Calculation	Service Level	Service Credit
Core Functionality Availability Service Level	<p>The Availability Service Level will be measured in relation to each Core Functionality in the production environment. The period of the “Unscheduled Outage” for Core Functionalities refers to any period that the functionality is not available to the State due to Solution failure. The period of such Unscheduled Outage shall be measured from the point in time when Contractor determines that the Unscheduled Outage began, which shall be the earlier of:</p> <ul style="list-style-type: none"> <li>• the point in time that such Unscheduled Outage is detected by Contractor through its monitoring system; or</li> <li>• The State reports such Unscheduled Outage to the Contractor Help Desk; or</li> <li>• any other manner in which Contractor has actual knowledge that the Core Functionality is not available to the State.</li> </ul>	Availability Service Level for each Core Functionality >= 99.90%	10% for each Core Functionality that fails to meet the Service Level

Service Level Name	Service Level Calculation	Service Level	Service Credit
	<p>The Unscheduled Outage shall end at the point in time which is earlier of:</p> <ul style="list-style-type: none"> <li>• the time Contractor registers in its monitoring system that the Core Functionality is available for the State’s use; or</li> <li>• the State reports activity for the Core Functionality proving it is available.</li> </ul>		
Extended Severity Level 1 Incident	Severity Level 1 Incident has occurred.	No Severity 1 Incident affecting multiple Core Functionality will continue for longer than eight (8) consecutive hours	25%
Average Response Time Service Level (Core Functionality)	The Average Response Time Service Level for Core Functionalities. The Average Response Time Service Level will be measured in relation to the Core Functionalities in the production environment using the Selective Entries used to measure the Availability Service Level.	Average Response Time Service Level for Core Functionalities of 1 second	TBD
Online Portal Availability Service Level	<p>The percentage of time the Online Portal is available for operational use according to the following formula:</p> <p>Online Portal Availability = [Measurement Period – Unscheduled Outage] ÷ Measurement Period x 100%</p> <p>The period of the “Unscheduled Outage” for Online Portal refers to any period that the functionality is not available to the State to Solution failure. The period of such Unscheduled Outage shall be measured from the point in time when Contractor determines that the Unscheduled Outage began, which shall be the earlier of:</p>	Online Portal Availability Service Level >= 99.95%	TBD

Service Level Name	Service Level Calculation	Service Level	Service Credit
	<ul style="list-style-type: none"> <li>• the point in time that such Unscheduled Outage is detected by Contractor through its automated transactions or monitoring system; or</li> <li>• The State reports such Unscheduled Outage to the Contractor Help Desk; or</li> <li>• any other manner in which Contractor has actual knowledge that the Online Portal is not available to the State.</li> </ul> <p>The Unscheduled Outage shall end at the point in time which is earlier of:</p> <ul style="list-style-type: none"> <li>• the time Contractor registers in its monitoring system that the Online Portal is available for the State’s use; or</li> <li>• the time Contractor registers traffic from the State which generates responses from the Online Portal.</li> </ul>		
Incident Notification	For Severity Level 1 and Severity Level 2 Incidents, the average timeline in which Contractor responds following the State’s reporting of such Incident via the Contractor Help Desk.	90% of Severity Level 1 Incidents responded to within 15 minutes and Severity Level 2 Incidents responded to within 30 minutes	TBD
Incident Resolution Time (Severity Level 1 Incidents)	Time required for Contractor to Resolve Severity Level 1 Incidents, measured from the point in time that the Severity Level 1 issue is reported by the State to the Contractor Help Desk, and continuing until (a) Contractor’s monitoring systems confirm the Resolution of the relevant Incident or (b) Contractor registers traffic	100% within 4 hours of reporting	TBD



Service Level Name	Service Level Calculation	Service Level	Service Credit
	from the State through the Contractor Solution.		
Incident Resolution Time (Severity Level 2 Incidents)	Time required for Contractor to Resolve Severity Level 2 Incidents, measured from the point in time that the Severity Level 2 issue is reported by the State to the Contractor Help Desk, and continuing until Resolution of the relevant Incident.	80% within 12 hours of reporting	TBD
Help Desk Response Time	Calls placed to the Contractor Help Desk will be answered/responded to within 60 seconds	80% of calls responded to within 1 minute	TBD
Change Request Response	Timeline for Contractor to respond to Change Requests following receipt from the State's Change Request provided in accordance with the Change Request Process	80% responded to within 10 Business Days	TBD

#### **57.8. Service Level Credit Calculation**

Upon a Service Level Failure, Contractor will provide the State with the Service Level Credit(s) which shall be calculated as the product of (i) the Service Level Credit percentage allocated by the relevant Service Level set out in Section 54.7 above, multiplied by (ii) the Total Ongoing Services Fee for the month corresponding to the Measurement Period (except with respect to the Availability Service Level for Online Portal, which shall be addressed as set forth below). The foregoing calculation shall be performed for each Service Level Failure occurring in a given month. With respect to the Availability Service Level for Online Portal, the Service Level Credit shall be calculated as a product of (i) the Service Level percentage allocated by the Availability for Online Portal Service Level set out in Section 54.7 above, multiplied by 10% of the Total Ongoing Services Fee.

If a single Incident results in the failure of Contractor to meet more than one Service Level, the State shall have the right to select any one of such multiple Service Levels affected by the Incident for which it will be entitled to receive a Service Level Credit; i.e., Notwithstanding and as an exception to the above, in the event of an Incident impacting the Availability Service Level for any Core Functionality, the Service Level Credit will be provided for each Core Functionality experiencing a Service Level Failure.

#### **57.9. Service Level Credit Settlement**

Within the standard monthly reporting, Contractor shall provide information about Service Level Credits due for the preceding month. Any Service Level Credit(s) due the State will be applied to the next Total Ongoing Services Fee invoice. Service Level Credits are not redeemable for cash.

For Service Level Credits that are based on the Total Ongoing Services Fees, the maximum amount of Service Level Credits that the State may collect in any month shall in no event exceed

an amount equal to ten percent (10%) of the Total Ongoing Services Fee unless there has been an Extended Severity Level 1 Incident when the maximum Service Level Credit for the applicable month will be an amount equal to fifteen percent (15%) of the Total Ongoing Services Fees.

**57.10. Service Level Credit Offsets**

In the event Contractor meets or exceeds the Expected Service Level associated with a Service Level that was the subject of a Service Level Failure in each of the three (3) months immediately following a Service Level Failure, then Contractor shall reverse the Service Level Credit or the State shall refund the Service Level Credit if previously paid by Contractor to the State for the associated Service Level Failure. If the Expected Service Level associated with a Service Level that was the subject of a Service Level Failure is not met in all of the months in such three (3) months immediately following a Service Level Failure, then no earn back is possible.

**57.11. Service Level Changes**

The State can request additions or changes to the Service Levels at any time via the Change Request process.

**58. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State’s Boilerplate contract clauses (as contained in the 2016 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below: \_\_\_\_\_

**Non-Collusion and Acceptance**

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.**

**In Witness Whereof**, 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.

[Contractor]  
By: \_\_\_\_\_

[Indiana Agency]  
By: \_\_\_\_\_

\_\_\_\_\_  
Name and Title, Printed

\_\_\_\_\_  
Name and Title, Printed

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

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

**Approved by:**  
Indiana Department of Administration

**Approved by:**  
State Budget Agency

By: \_\_\_\_\_ (for)  
Jessica Robertson, Commissioner

By: \_\_\_\_\_ (for)  
Jason D Dudich, Director

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

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

**APPROVED as to Form and Legality:**  
Office of the Attorney General

\_\_\_\_\_  
(for)  
Curtis T Hill, Jr., Attorney General

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

**Approved by:**  
Indiana Office of Technology

By: \_\_\_\_\_ (for)  
Dewand Neely, Chief Information Officer

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