**PROFESSIONAL SERVICES CONTRACT**

**Contract # 00000000000000000000XXXXX**

1. This Contract (“Contract”), entered into by and between the State of Indiana through the Indiana Department of Administration (the “State”) and VENDOR\_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:
2. 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 Laboratory Supplies and Related Services. The Contractor shall provide these services and commodities necessary to the State as set forth in RFP # 21-2633, 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** = State of Indiana Market Basket Pricing

**Exhibit B** = Non-Market Basket Discount Pricing

**Exhibit C** = Service Level Agreements

**Exhibit D** = Performance Metrics

**Exhibit E** = RFP # 21-2633 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 unless authorized in writing by the State’s Contract Manager. Restricted categories included but not limited to: office furniture, computer hardware and peripherals, computer software, telephone and telephone accessories, food and beverages, general industrial supplies, MRO safety and security supplies, tools, chemical (janitorial) supplies, cleaning products and supplies, and paper products (bath tissue, paper towels and facial tissue).

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 State 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
   1. 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 at each team meeting.

1. Training
2. 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. 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 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, Pricing Audit Report, local government usage, 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 C and D** for Service Levels and Performance Metrics.

Marketing and Promotions

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 # 21-2633 (see **Exhibit E**). 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**

The Contractor shall provide only unused products, unless otherwise agreed to by the State Account Manager. The Contractor shall guarantee its products to be free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty. The Contractor shall upon reasonable notice, replace any defective or failed item within the warranty period specified at no expense to the Ordering Agency (including labor, freight both ways, and materials) for products that are returned in accordance with the **Returns** Section of this Contract. In the event the product cannot be repaired or replaced to the satisfaction of the Ordering Agency, the Contractor shall refund any amounts paid by the Ordering Agency for the product. The terms of this Contract shall supersede any language to the contrary on purchase orders, invoices or other documents provided by the Contractor, manufacturer or other sources.

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, and the ordering Agency elects to purchase such warranties, 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, By mutual agreement of the parties.

1. **Ordering**
2. Hard Copy Catalog

If available, hard copies of the Indiana Laboratory Supplies Catalog shall be available upon request, at no cost, to Ordering Agencies for ordering under this Contract. Requests for hard copy catalogs should be submitted to Customer Service.

|  |  |
| --- | --- |
| **REQUEST HARD COPY CATALOG** | |
| **Contact:** |  |
| **Telephone:** |  |
| **Facsimile:** |  |
| **Email:** |  |

1. Electronic Catalog

The contract items listed in the Indiana Laboratory Supplies Catalog shall be available for viewing through the Contractor’s website. The Contractor’s electronic catalog provided as part of the online ordering system contains only those items available in the Indiana Laboratory Supplies Catalog.

|  |  |
| --- | --- |
| **VIEW ELECTRONIC CATALOG** | |
| **Website:** |  |

1. User Access:

State Agency personnel shall be able to access an electronic catalog with the Contractor. Users shall not have the authority to purchase or create orders through the electronic catalog. Users shall have the following capabilities within the electronic catalog:

1. Search electronic catalog for contract items
2. View contract item information (with pricing)
3. Create Carts
4. Ways to Place an Order

The Contractor shall be able to receive orders by any of the following methods: electronically via State’s punch-out, K-12/Library/OneIndiana BPS catalog, phone, fax, and confirming purchase order. The Contractor shall have internal controls, approved by the State of Indiana, to:

a) Verify any orders that appear to be abnormal

b) 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 a reasonable amount of time following 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 may be faxed. If the confirmation does not match the requested items, the Ordering Agency shall contact Customer Service.

1. Special Order Items

Ordering Agencies may purchase items that are not normally stocked by the Contractor. Special order items are items not stocked by the Contractor or their wholesale partners. The Contractor’s Account Manager shall provide a detailed quote regarding such items to the Ordering Agency. The quote at a minimum shall include: Quote Date, Valid until Date, Item Quantity, Item Description, UOM, Item Price, Order Total, and Lead Time. If the Ordering Agency is a State Agency, prior written approval from the State Contract Manager is required.

1. Volume Discounts

The Contractor may 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. **eProcurement**
2. State Agency Punch-Out

The Contractor agrees to provide an online catalog (punch-out) through the State’s PeopleSoft system that shall be used for pricing and ordering purposes. The Contractor shall meet all eProcurement specifications with regards to the punch-out as specified in the RFP documents (see **Exhibit E)**.

1. System Requirements

The Contractor’s system shall be able to identify an item is market basket, environmentally preferable, item is in stock, backordered, and suggest low-cost alternative items within a user’s cart. Users shall be able to conveniently create and save shopping lists for ease of ordering at a later date. The Contractor’s system shall have a searchable Market Basket list of contract items separate from the full catalog.

1. Limitation and Restrictions

The Contractor shall be able to block sections of its catalog from view. Similarly, the Contractor shall be able to program its ordering system to flag restricted items and verify that the Ordering Agency has approval from the State Contract Manager before shipping the items; this requirement is especially important for non-online ordering.

1. System Maintenance and Uptime

The Contractor shall maintain a reasonable system uptime of ninety-nine (98%) percent during the operational hours of Monday through Friday, 7AM – 5PM EST. The Contractor shall immediately notify the State Contract Manager of any system issues. Any content errors discovered on the Contractor’s punch-out shall be corrected by the next business day of notification to the Contractor of the error.

1. Third Party Management

The State reserves the right to use a third party for the management of the contract catalog (full line of market and non-market basket items). Upon notice by the State, Contractor agrees to provide catalog data in the cXML format specified by third party hosting vendor to an SFTP site. Any price or product information changes shall require an updated file be submitted to the SFTP site for approval in advance of any anticipated changes and shall be subject to State review and approval.

1. K-12 / Library / OneIndiana / Other local governmental entities

The Contractor shall work with the State and K-12/Library/OneIndiana purchasing portal to provide the ability of either a punch-out or hosted catalog for local government Ordering Agencies.

* K-12Indiana Portal: [www.K12Indiana.com](http://www.K12Indiana.com)
* LibraryIndiana Portal: [www.LibraryIndiana.com](http://www.LibraryIndiana.com)
* OneIndiana Portal: [www.oneindiana.net](http://www.oneindiana.net)

1. **Market Basket / Non-Market Basket**

The Contractor shall meet the State’s requirement for a quarterly item review of all Market Basket items in which the Contractor shall assist the State in revising items. The Contractor shall provide assistance in product selection for the State’s Market Basket with the intent to make sure the Market Basket contains relevant items. The Contractor shall provide reports to the State that shall assist in identifying high-usage, low cost items that should be added to the Market Basket. The quarterly item review is not an opportunity for market basket/non-market basket price increases; all pricing review will take place per the language in Section 2 Considerations of this document.

1. Product Availability

Contractor agrees that there shall be no cancellation of products within the Market Basket used without an equal and acceptable replacement pre-approved by the State of Indiana Contract Manager during the term of the agreement. The Contractor must communicate manufacturer’s discontinuation of any products to the State Contract Manager in writing within thirty (30) business days. In such instances, Contractor shall work with the State Contract Manager to identify and implement alternative options that shall maintain or reduce costs and supply equal or greater quantities per UOM associated with the replacements. The Contractor shall be prepared to offer detailed quarterly reports if requested by the State, displaying removed items off of contract list and suggested replacements.

1. Fill Rate Guarantee

The Contractor shall maintain a 100% fill rate on market basket items. Any item backordered from the Market Basket shall be provided at no charge to the State. The State acknowledges that the Contractor shall not incur an administrative fee for any failure to meet a 100% fill rate (i) as the result of a force majeure event including significant shortages of raw materials or (ii) for any Market Basket orders containing extraordinarily large quantities. In addition an administrative fee shall not apply if the Contract and the Ordering Agency mutually agree to substitute a back ordered market Basket item with a similar item. The substituted item shall not exceed the price of the back ordered Market Basket Item. For Non-Market Basket items, the Contractor shall maintain a 95% fill rate.

Line items that are reordered, back-ordered, or partially filled are not considered filled line items when calculating this service level. Orders not filled and partials shall be indicated on the packing list. Contractor shall be prepared, upon request, to provide documentation of fill rate to the State and work to reduce reordered, back-ordered, or partially filled orders.

1. **Shipping / Delivery**

The Contractor shall be able to deliver to all current and potential delivery sites within the State of Indiana and meet specified delivery requirements as well as delivery to all other Ordering Agency 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 two (2) business days 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

Freight terms for Catalog Products are F.O.B. The State’s U.S. destination, normal freight prepaid and absorbed by Contractor. Contractor shall also absorb ice, hazard, fuel, container and other product specific charges. The State shall pay for special handling or air express charges incurred at The State’s request, white glove delivery, and orders of equipment over $100,000. Notwithstanding the foregoing, For orders for laboratory furniture, vendor direct shipments, Non-Catalog and Third Party Products, terms shall be F.O.B. shipping point, freight prepaid and charged to The State at Contractor’s standard freight rates.

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. **Billing/Payment**
2. Invoice

The Contractor shall invoice the State immediately upon order. 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 Quantity 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**

Contractor offers a thirty (30) day “no hassles” return policy. The State may return a Catalog Product within thirty (30) days of receipt by obtaining a return goods authorization (“RGA”) number from Contractor and referencing the RGA number on return shipping documents. Returns made without an RGA number may be returned to the The State, freight collect. Returns of Non-Catalog and Products are at all times subject to a restocking fee equal to the restocking fee charged to Contractor by the manufacturer. Contractor’s return policy does not apply to (i) Products which have been discontinued, (ii) Products which are personalized or customized, (iii) Products not purchased from Contractor, (iv) Refrigerated or temperature controlled Products, (v) Products which are outdated, shelf-worn, used or defaced and, therefore, unsuitable for return to stock and resale as new, (vi) reagents, diagnostics, or chemicals, which have been opened, or (vii) Products that The State has caused to be shipped outside of the United States (or country of delivery), or (viii) any medical devices.

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, 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. **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. Purchasing Card

The Contractor shall accept the State’s Purchasing Card (P-Card) as an optional form of payment only at the point of sale, if advised by the State Contract Manager.

**2. Consideration**. Purchases under this Contract will be made at the discretion of the eligible purchasing entities. Contractor will be paid at the rates established in **Exhibit A and B**, attached hereto and incorporated herein, for providing the laboratory supplies and related services and performing the associated services to eligible ordering agencies under this QPA. The Contractor agrees that all prices are inclusive of any fees (including, but not limited to, delivery, shipping, service, administrative costs and other fees associated with delivery of commodities or completion of services to all State locations), unless specifically approved in writing by the State. Contractor understands and agrees that this Contract does not guarantee the Contractor a minimum quantity of orders or remuneration amount. Payment shall be made to the Contractor by the Ordering Agency in accordance with *Section 37 - Payments* and all other applicable provisions of this Contract.

This Contract’s total remuneration amount is based on the number and quantity of purchases made by eligible purchasing entities. Therefore, this Contract does not identify a total remuneration amount.

**3. Term**. This Contract shall be effective for a period of two (2) years. It shall commence on TBD and remain in effect through TBD. There may be two (2) one-year renewals for a total of four (4) years at the State’s option.

**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. Reasonable copies shall be furnished at no cost to the State if requested.

**5. Assignment; Successors**.

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

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

**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*. Audits shall only be allowed once every twelve months. Overcharges discovered shall be offset by undercharges. Use of third party auditor will require execution of an NDA between all parties in a form satisfactory to Contractor.

**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:

* 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

(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.

1. 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. Intentionally Deleted.**

**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. Offer phase-in training; and
2. Exercise its reasonable efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor may offer, 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. Intentionally Deleted.

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 IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

**17. Drug-Free Workplace Certification.** As required byExecutive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

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.

**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. Intentionally Deleted.**

**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, pandemic, epidemic, 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. In addition, where a Force Majeure Event materially impacts the pricing of goods or services, Contractor may equitably adjust the price of such impacted good or service, or decline to continue to offer them for purchase.

**21. Funding Cancellation**. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**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 negligent act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor. However, Contractor’s indemnity obligations shall be offset by the State’s contributory negligence or misconduct.

**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. Indiana Veteran Owned Small Business Enterprise Compliance**.  Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise (“IVOSB”) participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as “Attachment A-1” in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA’s IVOSB Division (“IVOSB Division”) and may require an amendment. It is the State’s expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: **[Add additional IVOSBs using the same format.]**

IVOSB COMPANY NAME PHONE EMAIL OF CONTACT PERSON PERCENT

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

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

The Contractor’s failure to comply with the provisions in this clause may be considered a material breach of the Contract.

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

**28. Insurance.**

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

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than $2,000,000 per per occurrence or $4,000,000 in aggregate, unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

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

3. Intentionally Deleted.

4. Intentionally Deleted

5. Intentionally Deleted.

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

7. Intentionally Deleted.

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.

**29. 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**30. Licensing Standards**. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**31. Merger & Modification**. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

**32. Minority and Women’s Business Enterprises Compliance.**

Award of this Contract was based, in part, on the Minority and/or Women’s Business Enterprise (“MBE” and/or “WBE”) participation plan as detailed in the Minority and Women’s Business Enterprises Subcontractor Commitment Form, commonly referred to as “Attachment A” in the procurement documentation and incorporated by reference herein**.** Therefore, any changes to this information during the Contract term must be approved by MWBE Compliance and may require an amendment. It is the State’s expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following MBE/WBE Division (“Division”) certified MBE and/or WBE subcontractors will be participating in this Contract: **[Add additional MBEs and WBEs using the same format.]**

MBE or WBE COMPANY NAME PHONE EMAIL OF CONTACT PERSON PERCENT

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

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

The Contractor’s failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**33. Nondiscrimination**. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee’s or applicant’s race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics”). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable,theContractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

**34. Notice to Parties**. Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

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

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

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E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. Notices to the Contractor shall be sent to:

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

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

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E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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.

**35. Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) RFP #\_\_\_\_\_, (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.

**36. Intentionally Deleted.**

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

**38. Penalties/Interest/Attorney’s Fees**. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney’s fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

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.

**39. Progress Reports**. The Contractor shall reasonable efforts to comply with requests to submit progress reports to the State upon reasonable request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**40. Public Record.** Subject to the limits of applicable public records laws, Contractor requests mutuality of confidentiality, particularly relating to its pricing and other proprietary financial information. The State shall afford Contractor a reasonable opportunity, at Contractor’s expense to contest any claims that any information contained herein is not proprietary and confidential, and shall also allow Contractor to make reasonable redactions to protect its information.

**41. Renewal Option**. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4 and the Contractor. The term of the renewed contract may not be longer than the term of the original Contract.

**42. Severability**. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**43. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**44. Taxes**. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**45. Termination for Convenience**. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

**46. 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.

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 for Default. 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.

**47. Travel**. No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the Budget Agency’s *Financial Management Circular – Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Circular* guidelines.

**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 industry standard professional and technical guidelines and standards, or further requirements as may be mutually agreed. 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 reasonably grant such request.

**50. State Boilerplate Affirmation Clause**. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State’s standard contract clauses (as contained in the *2019* OAG/ IDOA *Professional Services Contract Manual* orthe *2019 SCM Template*) in any way except as follows:

**Section 1.E.1. Warranties** - Contractor will agree, to the extent permitted by the manufacturer, to pass along all manufacturer warranties of products. Warranty is limited to performance in accordance with published specifications; and Warranty does not apply to any of Contractor or Contractor’s Supplier products, which have been disassembled, repaired or altered by anyone other than Contractor or Contractor’s Suppliers, or products that have been subjected to misuse or abuse. Returns are subject to Contractor’s standard return policy, as outlined below.

**Section 1.E.3. Test Samples** – Contractor shall supply sample products, By mutual agreement of the parties.

**Section 1.F.1 Hard Copy Catalog** – Hard copy catalogs may not be available in all cases, as Contractor distributes hundreds of thousands of products. Please coordinate with the sales representative for hard copy catalog needs.

**Section 1.F.5. Order Confirmation** – Order confirmation will be in line with Contractor’s standard operating procedures, which may not be one hour in all cases. Contractor will use reasonable efforts to meet Ordering Agency timelines.

**Section 1.F.6. Special Order Items** – Contractor will provide Contractor’s quote on Contractor’s letterhead, not a manufacturer’s quote.

**Section 1.F.7. Volume Discounts** – Contractor will work with the State to implement additional volume discounts where possible.

**Section 1.H.1. Product Availability** – Contractor cannot guarantee access to specific products in all cases, but will collaborate with the State to provide prompt notice.

**Section 1.I.3.** **Shipping Charges** - Freight terms for Catalog Products are F.O.B. The State’s U.S. destination, normal freight prepaid and absorbed by Contractor. Contractor shall also absorb fuel, ice, hazmat, container and other product specific charges. The State shall pay for special handling or air express charges incurred at The State’s request, and shall also pay for white glove delivery and equipment orders of $100,000 or more. Notwithstanding the foregoing, For orders for laboratory furniture, vendor direct shipments, Non-Catalog and Third Party Products, terms shall be F.O.B. shipping point, freight prepaid and charged to The State at Contractor’s standard freight rates.

**Section I.J.1 Invoices** – Invoices are sent upon order.

**Section 1.K. Returns -** Contractor offers a thirty (30) day “no hassles” return policy. The State may return a Catalog Product within thirty (30) days of receipt by obtaining a return goods authorization (“RGA”) number from Contractor and referencing the RGA number on return shipping documents. Returns made without an RGA number may be returned to the The State, freight collect. Returns of Non-Catalog and Products are at all times subject to a restocking fee equal to the restocking fee charged to Contractor by the manufacturer. Contractor’s return policy does not apply to (i) Products which have been discontinued, (ii) Products which are personalized or customized, (iii) Products not purchased from Contractor, (iv) Refrigerated or temperature controlled Products, (v) Products which are outdated, shelf-worn, used or defaced and, therefore, unsuitable for return to stock and resale as new, (vi) reagents, diagnostics, or chemicals, which have been opened, or (vii) Products that The State has caused to be shipped outside of the United States (or country of delivery), or (viii) any medical devices.

**Section 1.M.2. Purchasing Card** – P-Card and credit shall only be accepted at the point of sale.

**Section 4 Access to Records -** Audits shall only be allowed once every twelve months. Overcharges discovered shall be offset by undercharges.Use of third party auditor will require execution of an NDA between all parties in a form satisfactory to Contractor.

**Section 7 Audits -** Audits shall only be allowed once every twelve months. Overcharges discovered shall be offset by undercharges.Use of third party auditor will require execution of an NDA between all parties in a form satisfactory to Contractor.

**Section 11. Condition of Payment –** Payment is due Net 30 from date of invoice. Work satisfaction should be handled by warranty or return goods claims, not withholding.

**Section 12. Confidentiality of State Information** – Subject to the limits of applicable public records laws, Contractor requests mutuality of confidentiality, particularly relating to its pricing and other proprietary financial information.

**Section 13.A.** – Contractor may provide phase-in training, where available, for an additional cost.

**Section 13.B.** – Delete

**Section 13.C.** – Delete

**Section 19** – Intentionally Deleted.

**Section 20 Force Majeure** – Request Inclusion of pandemic and epidemic in definition of force majeure event. Pause of performance and reasonable increase in cost to perform during such event should be options.

**Section 24 Indemnification** – Contractor shall only indemnify The State for Contractor’s negligence and willful misconduct under this Agreement. The State hereby agrees to be responsible for loss of property or personal injury arising out of The State’s and its employees’ negligence while acting within the scope of their employment by The State.

**Section 28. Insurance** – Contractor maintains $2M/$4M General Commercial liability insurance; $1M/$1M Automobile Coverage. And a $10M Umbrella. Contractor does not maintain E&O or Professional Liability insurance.

**Section 36 Ownership of Documents and Materials** – Delete, no IP will be developed under this Agreement.

**Section 39 Progress Reports** – Contractor will use reasonable efforts to comply with Progress Reports requested by the State or its Agencies.

**Section 40** **Public Record**- Subject to the limits of applicable public records laws, Contractor requests mutuality of confidentiality, particularly relating to its pricing and other proprietary financial information.

**Section 41 Renewal Option** – Any renewal shall be mutually agreed between the parties.

**Section 46.B.** – Contractor shall only be subject to reasonable costs for breach and/or default, and in no event liquidated or punitive damages.

**Section 49. Work Standards** – Contractor shall comply with industry standard professional and technical standards.

**New Section Price Adjustments** – Contractor shall be permitted to adjust price in the event that the price falls below Contractor’s cost plus 18%. Prices may also be adjusted if the cost to Contractor increases by 3% or more during a fixed price period.

**New Section Limitation of Liability** – Contractor requests limit of liability to the extent permissible under applicable law, or the following: NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, CONTRACTOR’S LIABILITY (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF CONTRACTOR FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SUPPLIER’S STANDARD WARRANTY PROVISIONS)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE PAID BY THE STATE TO CONTRACTOR FOR THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS ($1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER CONTRACTOR (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT. THE FOREGOING INDEMNIFICATION PROVISION STATES A PARTY’S ENTIRE LIABILITY TO THE OTHER FOR THE CLAIMS DESCRIBED HEREIN.

Exhibit D – Contractor does not agree to SLA related fees or similar liquidated damages.

51. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, CONTRACTOR’S LIABILITY (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF CONTRACTOR FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SUPPLIER’S STANDARD WARRANTY PROVISIONS)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE PAID BY THE STATE TO CONTRACTOR FOR THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS ($1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER CONTRACTOR (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT. THE FOREGOING INDEMNIFICATION PROVISION STATES A PARTY’S ENTIRE LIABILITY TO THE OTHER FOR THE CLAIMS DESCRIBED HEREIN.

52. Price Adjustments. Contractor shall be permitted to adjust price in the event that the price falls below Contractor’s cost plus 15%. Prices may also be adjusted if the cost to Contractor increases by 3% or more during a fixed price period.

**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.**

**Agreement to Use Electronic Signatures**

**[Applicable only to contracts processed through SCM]**

**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.

**[Contractor] Indiana Department of Administration**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Name and Title, Printed Name and Title, Printed

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

**Approved by: Approved by:**

Indiana Department of Administration State Budget Agency

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(for) By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for)

Lesley A. Crane, Commissioner Zachary Q. Jackson, 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit A – State of Indiana Market Basket Pricing**

This document is an exhibit to the Contract, and is deemed to be attached to and incorporated within

the Contract by reference. Any inconsistency, conflict, or ambiguity between this exhibit and the Contract shall be resolved by giving precedence and effect to the Contract.

**TBD**

**Exhibit B – Non-Market Basket Discount Pricing**

This document is an exhibit to the Contract, and is deemed to be attached to and incorporated within

the Contract by reference. Any inconsistency, conflict, or ambiguity between this exhibit and the Contract shall be resolved by giving precedence and effect to the Contract.

**TBD**

**Exhibit C – Service Level Agreements**

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.

The Contractor shall capture these SLAs as designed, and any additional service levels presented from the State over the life of the Contract. In doing so, the Contractor shall facilitate and monitor the performance of all SLAs identified. The Contractor shall tabulate the actual Service Level Agreements and Performance Standards outcomes and present the actual results during each affiliated Quarterly Business Review (QBR). The Contractor will 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.

A Key Performance Indicator (KPI) is a specific survey submitted to the Using Agency. The intent of the KPI is to obtain real, continuous feedback from the Using Agencies on the Contractor’s management performance, the Contractor’s overall performance, and other identified factors are substance of the KPI. These surveys will be used to measure the growth and progress of the program. The Contractor must reach out to the Using Agency at least on a quarterly basis to ask the Using Agencies to complete the KPI and return. The Contractor shall make the KPI available online. The Using Agencies shall complete and provide their final 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 Contract Manager.

The SLAs shown in this contract are to be followed during all times of the Contract and should be tabulated and scored based on the Measurement of Services.

The Contractor understands and agrees to the standards of work that are expected to be put forth including, but not limited to on average Sometimes Exceeds Expectations (5) for every SLA. In addition to the other terms and conditions of this Contract, if the State deems that the Contractor has failed to meet any performance standard of an SLA, the State reserves the right to ask the Contractor for a Corrective Action Plan (CAP). The State has the discretion to accept multiple Corrective Action Plans from the Contractor, over the life of the contract, if deemed appropriate. If any of the standards listed below are not met the Contractor must issue the State a Corrective Action Plan per the requirements in the Contract.

The Contractor shall conduct surveys at a minimum of quarterly with the Using Agencies that used their services during the corresponding time period. The questions are listed in below. No questions can be added or deleted without written approval from the State Contract Manager. If the State Contract Manager requests changes be made to any and all of the surveys the Contractor has 15 business days to update all of the surveys or a mutually agreed upon time.

Upon the State’s written request, but no less than once per quarter, the Contractor shall conduct surveys with the Using Agencies; in review of the scope provided by the Contractor. These surveys will have a scale range from 1 to 7 as follows:

1=Never Meets Expectations

2= Rarely Meets Expectations

3=Sometimes Meets Expectations

4=Meets Expectations

5=Sometimes Exceeds Expectations

6=Frequently Exceeds Expectations

7=Always Exceeds Expectations.

N/A= Not Applicable/ Did Not Use These Services (The only score that does not count toward the numerator or denominator when calculating the averages.)

The Service Level Agreements are the work standards the Contractor has agreed to meet, uphold, and be compliant with for the life of the Contract. The Contractor shall survey Using Agencies to gather this information to determine the quality of Service being provided under this agreement. The table identifies the SLA and the survey question that corresponds. The question listed is the question that the Contractor must ask the Using Agency in the survey (KPI). All Using Agencies must be surveyed. The last column lists the corresponding “Performance Standard” or the measurement the Contractor is required to meet or exceed. Each Service Level Agreement must receive an Average of 5 or above.

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| --- | --- | --- | --- |
| **Service Level Agreement** | **Survey Question** | **Performance Standard** | |
| Catalog Accessibility | How do you rate the accessibility of the Contractor’s Online Catalog? | Average of 5 and above | |
| Fill Rate of Market Basket Items | How do you rate the Contractors ability to provide Market Basket Items? | Average of 5 and above | |
| Fill Rate of Non-Market Basket Items | How do you rate the Contractor’s ability to provide Non-Market Basket Items? | Average of 5 and above | |
| Pricing Accuracy | How would you rate the Contractor’s invoice accuracy as it relates to pricing? | Average of 5 and above | |
| Delivery Turnaround Time | How would you rate the Contractor’s product delivery? | Average of 5 and above | |
| Problem Resolution | How would you rate the Contractor’s responsiveness to issues? | Average of 5 and above |

**Exhibit D – Performance Metrics**

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.

**Performance Metric**

A performance metric is a measure of an organization’s activities and performance. Performance metrics should support a range of stakeholder needs from customers, shareholders to employees. They are created for the purpose to monitor the performance of the Contractor and the overall contractual agreement. These are represented to identify both qualitative and quantitative information. The Contractor shall monitor and fulfill all associated Performance Metrics.

The Contractor shall capture these metrics as designed, and any additional metric presented from the State over the life of the Contract. In doing so, the Contractor shall facilitate and monitor the performance of all Performance Metrics**.** The Contractor shall tabulate the actual Performance Metrics 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.

In addition to the other terms and conditions of this Contract, if the State deems that the Contractor has failed to meet any performance standard of a Performance Metric, the State reserves the right to ask the Contractor for a Corrective Action Plan (CAP). The State has the discretion to accept multiple CAPs from the Contractor, over the life of the contract, if deemed appropriate.

The Contractor shall have (5) business days to provide a CAP detailing the actionable cure for remedying the issue or issues of each performance metric in need of correction as set forth in the aforementioned notice. Upon CAP receipt, 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 of written notification to the Contractor of the State’s acceptance. From that point, the Contractor has the mutually agreed upon timeline to cure the issues.

If the issue(s) associated with the CAP are not resolved within the proposed cure period, the State may assess the financial consequences as shown in the chart below. Upon a fourth failure, the State has the right to invoke the Termination for Default clause.

The financial consequences will be paid via check made out to the Indiana Department of Administration within 30 calendar days after the end of the applicable cure period set forth in the CAP. These consequences are individually assessed for failures over each three-month (quarterly) period beginning with the second 3-month period and every 3 months thereafter.

While the State does not directly pay the Contractor for its services under this Contract, the

State nonetheless dedicates its resources to the management and success of the programs

enabled by this Contract. Accordingly, if the Contractor provides diminished services under this

Contract the State must direct additional resources to the management thereof. In an effort to

recompense the State for these resources, the Contractor and the State agree to the

administrative fees outlined in this section.

The Contractor’s performance is more critical in some areas than others. Accordingly, the

Contractor and State agree that certain performance lapses on the part of the Contractor cause

more damages to the State than other lapses. These performance areas are divided below into

“Important” and “Critical” performance areas, and the parties agree to this classification.

The State requires the Contractor to timely remedy its performance lapses. If the Contractor’s

performance lapses are not timely corrected the State shall incur additional damage until lapses

are remedied. Accordingly, the parties agree that, as detailed below, the administrative fees

contemplated below shall continue to accrue as detailed until the underlying performance lapse

is remedied. Under no circumstances will Contractor’s monthly aggregate liability for any and all

Administrative Fees assessed against Contractor under the Contract exceed the sum of five thousand dollars ($5,000.00) per month.

Verification of Contractor’s success or failure to achieve Performance Metrics may be performed

by the State or a designated State contractor. Within the first five days of each calendar month, the Contractor shall issue a check payable to the State for the total amount of administrative fees incurred in the previous quarter with any necessary documentation (to the extent that any accrue).

Performance Metrics and associated Administrative Fees are as follows:

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**Exhibit E – RFP # 21-2633 Documentation**

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.

**TBD**