

**STATE OF INDIANA'S  
CONSTRUCTION MANAGER AS CONSTRUCTOR CONTRACT  
FOR PUBLIC WORKS CONSTRUCTION PROJECT**

**Contract #:** \_\_\_\_\_

This Public Works Construction Contract ("Contract"), entered into by and between the INDIANA DEPARTMENT OF ADMINISTRATION's Public Works Division (the "State" and "Owner") and \_\_\_\_\_ (the "Contractor" or "CMc"), is executed pursuant to the terms and conditions set forth herein and is governed by IC 4-13.6, et seq. and IC 5-32, et seq. In consideration of those mutual undertakings and covenants, the parties agree as follows.

Public Works Project #: \_\_\_\_\_

**Project Description:** \_\_\_\_\_

Institution/Department: \_\_\_\_\_

Construction Manager as Constructor ("CMc") services shall include, but not be limited to:

- (1) Preconstruction phase services, including advice during the preconstruction phase of the Project (as defined in Section 1. Definitions);
- (2) Consultation, collaboration, project construction management, and other services as described in the RFP, regarding the construction during and after the design and construction phases;
- (3) Development of a construction schedule, estimated cost of construction, and analysis of qualifications of first tier subcontractors; and
- (4) A guarantee of:
  - (a) The cost of the Project; and
  - (b) The Project schedule.

1. Definitions.

A. The following definition of "**Contract Documents**" applies throughout this Contract for the State's Public Works Project Number \_\_\_\_\_ ("Project").

The term "Contract Documents" shall mean and include the following: this Contract and the Project Bid Package, which includes the Contractor's Application for Pre-Qualification, the Public Work's Solicitation for Quotation (DAPW 30), Bid Documentation, Pre-Contract Document, General Conditions (DAPW 26), Supplementary Conditions, Instructions to Bidders, Drawings, Specifications, and Addenda issued by the State in connection with the Project and prior to the submission of the Contractor's Proposal.

Subject to Section 39, *Order of Precedence, Incorporation by Reference*, of this Contract, Contract Documents shall also consist of the Contractor's Proposal and Response, as well as any other documentation submitted by it in response to the Project (hereinafter collectively referred to as "Contractor's Proposal").

Additionally, Contract Documents shall include any subsequent amendments, change orders and any written interpretations issued as field orders by the Designer pursuant to General Conditions, Article 1.2 (DAPW 26) and all field orders for minor changes by the Designer pursuant to General Conditions, Article 12.3 (DAPW 26). Change orders and amendments shall be executed in the manner authorized by Section 35, *Merger and Modification*, of this Contract.

When applicable, Contract Documents shall include the Performance Bond and/or the Labor and Materials Payment Bond, as required by IC 4-13.6-7-6, IC 4-13.6-7-7, and IC 5-32-4-2, and fully described and captured in the General Conditions (DAPW 26).

The Contract Documents are specifically and collectively incorporated herein by reference.

B. "**A/E**" means the architect and/or engineer with whom the State has entered into a professional services agreement for the Project.

C. "**Construction Manager as Constructor or CMc**" means the person that provides CMc services.

D. **“Cost of Work”** means those costs necessarily incurred by CMc in the proper performance of the Work, but which shall in no event be at rates greater than the standard rates in the locale of the Project.

E. **“Change Order”** has the meaning set forth in Article 12 of the State of Indiana General Conditions (DAPW 26).

F. **“Guaranteed Maximum Price or GMP”** means the maximum sum that the State shall be responsible to pay for the completion of the Project, subject to any Change Orders, as defined in Article 12 [Changes in Work] of State of Indiana General Conditions (DAPW 26).

G. **“GMP Acceptance”** means the document approved by the Owner when price points have been identified and approved by the Owner on matters related to Cost of Work, pre-construction management fees, construction management fees and any approved contingencies.

H. **“Person”** means a natural person, a partnership, a limited liability company, or a corporation.

## 2. CMc and Owner Responsibilities

### A. Duties of CMc.

The CMc accepts the relationship of trust and confidence established between him and the Owner by this Contract. The CMc covenants with the Owner to furnish his best skill and judgment and to cooperate with the A/E in furthering the interests of the Owner. The CMc agrees to furnish efficient business administration and superintendence and to use his best efforts to complete the Project in an expeditious and economical manner consistent with the interest of the Owner.

CMc shall furnish all services, perform all work, and otherwise fulfill all of its obligations in conformance with the Contract Documents and **EXHIBIT 1**, attached. These duties are described and captured in the Contract Documents.

The Contractor agrees that not more than twenty percent (20%) of the work, measured in dollar volume, will be performed by its own forces, if awarded pursuant the applicable public works statute.

Any subcontractor employed for any part of this Contract awarded in excess of One Hundred Fifty Thousand Dollars (\$150,000.00) shall be qualified with the State of Indiana's Public Works Division Certification Board and shall have a valid Certificate of Qualification in the prime classification of work for this Contract.

The CMc will perform the following services:

### 2.1 Pre-Construction Phase Services

The Pre-Construction Services will include, but not be limited to, the preparation of the following documents and completion of the following services, some of which are further described in **EXHIBIT 1**, attached hereto and incorporated herein:

2.1.1 Attend regularly scheduled project team meetings.

2.1.2 Review of the design documents for constructability, completeness, accuracy, and proper coordination of disciplines.

2.1.3 Continual review of design documents and preparation of detailed construction estimates to confirm conformance to the approved project budget.

2.1.4 Continual value analysis of the design and identification of opportunities to meet or reduce construction costs and/or improve facility performance.

2.1.5 Development of a detailed construction schedule for the project, including identification of long lead items and owner supplied equipment and materials.

2.1.6 Development of detailed budget estimates at critical milestones including a 50% Construction Document Estimate.

2.1.7 Development of a comprehensive list of subcontractors and suppliers.

2.1.8 Development of Bid Packages.

2.1.9 Establish bid schedules and conduct pre-bid conferences.

2.1.10 Analyze responses, conduct pre-award conferences and negotiations with successful bidders and recommend responses to be accepted or rejected.

2.1.11 Obtain permits and other governmental reviews and approvals.

2.1.12 **Development of a Guaranteed Maximum Price (GMP).** CMc shall submit to the Owner a GMP Proposal. The GMP Proposal should include a statement of the estimated cost of the work organized by trade categories or systems, allowances, contingency, and the CMc's management fee.

2.1.13 **Construction Contingency:** The Guaranteed Maximum Price will contain a separately identified contingency factor (the "Construction Contingency") in the amount not to exceed three percent (3%) of the GMP construction budget. The Construction Contingency is not allocated to any particular item of the Cost of the Project and is established for the CMc's use as may be required for costs incurred in the work from unforeseen causes or details which should have been anticipated by the CMc at the time of the Owner's approval of the GMP. Such unanticipated causes or details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the GMP documents, the correction of minor defects not relating to design, delays in receipt of materials due to the fault of the CMc, corrections in the work provided the CMc has exhausted all reasonable means to obtain correction of same from the responsible subcontractor, labor and material overruns, and additional costs relating to subcontractor defaults, provided any such default is not due to the Owner's actions or failure to act. In the event the default of a subcontractor is due to the Owner's actions or failure to act, the CMc may be entitled to an appropriate adjustment in the GMP in accordance with the terms of this Contract. The CMc may utilize the Construction Contingency for any items within the Cost of the Project without the necessity of a Change Order, without constituting a Change in the Project, and without resulting in any change in the GMP. At the conclusion of the project any remaining balance in the Construction Contingency becomes the property of the Owner. The Construction Contingency will not be used to increase the CMc's fee.

2.1.14 Advertise the bid packages for the subcontractors pursuant to the applicable public works statute.

2.1.15 Review the bids as required pursuant to the applicable public works statute.

2.1.16 The CMc may perform portions of the work only if it complies with the applicable public works statute and if the CMc:

- (a) Is approved by the Owner;
- (b) Would be awarded a contract for the work under the applicable contract award standard; and
- (c) Performs only such work that equals not more than twenty percent (20%) of the total value of the Project.

2.1.17 GMP Acceptance will be executed through a Change Order Amendment to the Contract. Such Change Order Amendment shall also include the certified IVOSB, WBE, and MBE subcontractors that will be participating in the Contract.

2.1.18 In the event the Owner elects to complete the Project in phases, the foregoing provisions shall apply to each phase for which a GMP is requested.

## **2.2 Construction Phase Services:**

The Construction Services will include, but not be limited to, completion of the following services, some of which are further described in **EXHIBIT 1**, attached hereto and incorporated herein:

2.2.1 **Project Control:** Monitor the work of the subcontractors and coordinate the work with the activities and responsibilities of the Owner and A/E to complete the Project in accordance with the Owner's objectives of cost, time, quality and safety all of which are enumerated in the Contract Documents for construction.

2.2.2 Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review

the schedule for work not started or incomplete and recommend to the Owner adjustments in the schedule to meet the probable completion date. Provide summary reports for each adjustment and document changes in the schedule.

2.2.3 Determine the adequacy of the subcontractors' personnel and equipment and the availability of materials and supplies to meet the schedule.

2.2.4 Recommend courses of action to the Owner when requirements of a subcontract are not being met.

2.2.5 Submit a proposed Project Schedule for Owner's acceptance and provide monthly updates of the schedule. The proposed Project Schedule will include a detailed and comprehensive construction schedule utilizing a critical path method arrow diagram network that (i) shows all major design, procurement and construction elements and phases of the Project and Owner furnished items with milestone dates; (ii) breaks down each element or phase by trade; (iii) shows early and late start dates so that all "float" time will be accurately identified; (iv) clearly identifies critical path activities; (v) discloses relationship in number of days and types of linkage between all linked activities; (vi) identifies, coordinates and integrates design and construction schedules, Owner's responsibilities, governmental approvals, early access dates for certain portions of the Work by Owner, and other activities necessary for the timely completion of the Project in accordance with the scheduled dates of Substantial and Final Completion; and (vii) otherwise is in a form satisfactory to Owner. Owner's acceptance is expressly limited to Owner's acknowledgment that based upon Owner's limited review, the dates of Substantial Completion and milestone dates are acceptable and the latest dates of Owner-provided information, materials, approvals and the like identified in the Project Schedule are reasonable.

2.2.6 The CMc may seek to perform portions of the work as stated in Section 2.1.14 herein so long as the CMc submits its bid for those portions of the work in the same manner as all other subcontractors and if the State independently determines that the CMc's bid provides the best value for the State. In the event that the CMc submits a bid for a portion of the work, the State will conduct the review without the assistance of the CMc.

2.2.7 Maintain cost accounting records on authorized work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records, unless provided for by the Trade Contractor. Afford the Owner access to these records and preserve them for a period of three (3) years after final payment.

2.2.8 Change Orders: Develop and implement a system for the preparation, review and processing of Change Orders in compliance with the requirements of the Contract Documents. Recommend necessary or desirable changes to the Owner and the A/E, review requests for changes, submit recommendations to the Owner and the A/E, and assist in negotiating Change Orders.

2.2.9 Payments to subcontractors pursuant to the requirements in the Construction Documents.

2.2.10 Permits and Fees: Obtain all building permits and special permits for permanent improvements, excluding permits for inspection or temporary facilities required to be obtained directly by the various subcontractors. Assist in obtaining approvals from all the authorities and must be done before permits having jurisdiction. The Owner will pay for the permit and all utility assessment fees.

2.2.11 Owner's Consultants: If required, assist the Owner in selecting and retaining professional services of a surveyor, testing laboratories and special

consultants, and coordinate these services, without assuming any responsibility or liability of or for these consultants.

- 2.2.12 Inspection: Inspect the work of subcontractors for defects and deficiencies in the work and for compliance with the requirements of the Construction Documents.
- 2.2.13 Reports and Project Site Documents: Record the progress of the Project. Submit monthly written progress reports to the Owner and the A/E including information on the subcontractors' work, and the percentage of completion. Keep a daily log available to the Owner and the A/E. Submit the daily logs to the Owner and A/E monthly.
- 2.2.14 Maintain at the Project site, on a current basis: records of all necessary contracts, drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all revisions. Obtain data from subcontractors and maintain a current set of record and as-built drawings, specifications and operating manuals. Review as-built/record drawings each month prior to sign-off of subcontractor applications for payment to determine if documents are being kept up to date. At the completion of the Project, deliver all such records to the Owner.
- 2.2.15 Implement a consistent communication plan that integrates [Institution/Department] and Owner into the Project.

### **2.3 Post Construction and Closeout**

- 2.3.1 Generate a punch list in coordination with the A/E.
- 2.3.2 Coordinate with each subcontractor to confirm the punch list is completed in a timely fashion.

### **2.4 Equipment and System Startup and Commissioning**

- 2.4.1 Confirm that all equipment is thoroughly inspected prior to startup.
- 2.4.2 After inspection, startup should be conducted in accordance with the Project specifications.
- 2.4.3 Secure and transmit to the A/E required guarantees, affidavits, releases, bonds and waivers.
- 2.4.4 Turn over to the Owner all keys, manuals, record drawings and maintenance stocks.
- 2.4.5 Properly train the Owner on equipment maintenance and operation.
- 2.4.6 Conduct with the Owner and A/E, post-completion inspections during the warranty period to ascertain defects in material and workmanship and determine corrective action. Assign, if possible, the causes of the defects, the responsible subcontractor(s), and recommend reasonable corrective action. Aid the Owner in obtaining this corrective action and in filing insurance and bond claims where coverage is available. Ultimate responsibility for correcting defects in material and workmanship will rest with the CMC at no expense to the Owner.

### **B. Owner's Responsibilities**

- (1) The Owner will provide full information regarding the requirements for this Project.
- (2) The Owner may designate a representative who will be fully acquainted with the Project and who will render decisions and furnish information with reasonable promptness.
- (3) The A/E, employed by the Owner, has provided design services and prepared construction documents for the Project.

### **3. Consideration.**

The CMC guarantees that the Contract Sum shall not exceed the GMP as agreed to in the GMP Acceptance document, subject to the additions and deductions by Change Order as approved by an amendment or amendments to this Contract. Costs which would cause the GMP to be exceeded shall be paid by the CMC without reimbursement by the Owner.

All payments provided herein are subject to appropriations made and funds allocated as provided by laws of the State of Indiana. The State shall pay the Contractor for performance of this Contract in current funds as follows:

**Pre-Construction Management Fee** (if applicable): The initial fee for this Contract is comprised of only the Pre-Construction Management Fee which shall not exceed \$ [REDACTED].

Upon execution of the GMP Acceptance, the total contract price shall not exceed \$ [REDACTED], which is the sum of the following components:

**(a) Construction Management Fee.** The Construction Management Fee is not to exceed three percent (3%) of the Cost of Work, as stated in the GMP Acceptance document. Included in the CMC's management fee are salaries and other compensation of the CMC's personnel stationed at the CMC's principal or other offices other than the project site office, general operating expenses of the CMC's principal and branch offices other than the project site office, general and administrative costs of any kind, CMC's capital expense, including interest on the CMC's capital employed for the Project; and cost in excess of the GMP.

**(b) General Conditions** (which may include costs related to bonds, insurance, temporary barriers, signage, parking, cleaning, waste disposal, etc.)

(c) Cost of Work.

**(d) Construction Contingency** as defined in Section 2.1.13.

**(e) Unused Contingencies.** Any remaining balance in the Construction Contingency becomes the property of the Owner. It may be returned to the Owner at Project completion through a credit to the contract sum.

**(f) Realized savings.** If there are any savings realized in actual expenditures for the Cost of Work, those savings shall be returned to the Owner through a credit at Project completion. Returned costs shall include the portion of Construction Management Fee proportioned to the reduced Cost of Work.

**(g)** The Contract sum shall not exceed the amount specified in the GMP, as set forth in the GMP Acceptance, as it may be amended from time to time.

BASE BID: \$

ALTERNATE(S):

TOTAL CONTRACT PRICE: \$

4. Term.

The term of this Contract is [REDACTED] years commencing on the date of the last state signatory to this Contract.

5. Licensing Standards.

The Contractor and 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 shall not be required to 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 licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

6. Escrow Agreement.

Contemporaneously with the execution of this Contract, the parties may provide for the escrow of retained portions of payments to the Contractor by entering into a separate Escrow Agreement, pursuant to IC 4-13.6-7, with an escrow agent described in IC 4-13.6-7-2(b). Should the Contractor elect to escrow retainage, the Escrow Agreement will become a part of this contract as if fully contained herein.

#### 7. Contractor's Certification.

The Contractor certifies that it has been pre-qualified by the State of Indiana's Public Works Division Certification Board to perform the work and furnish the services required by this Project. The Contractor further certifies that all information and documentation submitted by it in its Application for Prequalification Certification, the Contractor's Proposal and submitted in response to the Project, is true, accurate and complete as of the date of this Contract's effectiveness. The Contractor shall immediately notify the State of any material change to such information. The Contractor shall immediately notify the State if, during the course of performance of this Contract, it or any of its principals are proposed for debarment or ineligibility, or become debarred or declared ineligible, from entering into contracts with the federal government or any department, agency or political subdivision of the State.

#### 8. Contractor Employee Drug Testing.

Pursuant to IC 4-13-18, the Contractor shall implement the employee drug testing program submitted as part of its Contractor's Proposal. The State may cancel this Contract if it determines that the Contractor:

- A. Has failed to implement its employee drug testing program during the term of this Contract;
- B. Has failed to provide information regarding implementation of the Contractor's employee drug testing program at the request of the State; or
- C. Has provided to the State false information regarding the Contractor's employee drug testing program.

#### 9. Access to Records.

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

#### 10. 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.

#### 11. 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.

#### 12. 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. 200.331 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.*

### 13. 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.

### 14. 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.

### 15. Compliance with Laws.

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

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

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

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

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



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

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

H. As required by IC § 5-22-3-7:

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

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

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

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

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

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

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

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

#### 16. Condition of Payment.

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

#### 17. 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.

#### 18. Continuity of Services.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and

2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

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

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

2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

#### 19. 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.

#### 20. 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.

#### 21. 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.

## 22. Drug-Free Workplace Certification.

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

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

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

## 23. 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.

24. Employment Option. [Deleted by agreement of the parties.]

25. Force Majeure.

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately 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.

26. Funding Cancellation.

As required by Financial Management Circular 3.3 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.

27. 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.

28. 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.

29. Indemnification.

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

30. 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 Contractor shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

31. 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 Division of Supplier Diversity 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:

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity 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-462, 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 Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

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

32. 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.

33. Insurance

A. The Contractor and their subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract. The required Limits of Liability can be obtained with a combination of primary and excess liability policies.

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
3. The Contractor shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.
4. The Contractor and their subcontractors 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.
5. 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.

D. Contractor may, upon Owner's agreement, provide Commercial General Liability and Excess Liability coverage in connection with the performance of the Work through a Contractor Controlled Insurance Program ("CCIP"). Participation in the CCIP will be mandatory for eligible parties, and such parties will be enrolled as directed by the Contractor or the Contractor's CCIP Administrator. The amount and terms of the coverage provided through the CCIP shall meet the requirements for liability insurance set forth herein.

#### 34. 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 Contractor shall exercise its best efforts to identify and hire a replacement who is acceptable to the State to ensure the Project continues without delay. Should the parties fail to agree on an acceptable replacement for an individual identified as a Key Person 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: %%KEY\_PERSON\_1%%

35. 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.

36. 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 the Division of Supplier Diversity 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 Division of Supplier Diversity 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:

---

---

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity 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, Room W-462, 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 of Supplier Diversity 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 of Supplier Diversity certified subcontractor payments directly to the Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

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

37. Nondiscrimination.

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

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

38. 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. Such notice, statement or other communication shall include the Public Works Project Number in the subject line of the E-mail and the body of the notice or other communication.

A. Notices to the State shall be sent to:

Public Works Division, Director  
Indiana Department of Administration  
402 W Washington St Room W462  
Indianapolis, IN 46204  
E-mail: [rgrossman@idoa.IN.gov](mailto:rgrossman@idoa.IN.gov)

B. Notices to the Contractor shall be sent to:

CONTRACTOR  
ADDRESS  
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.

39. 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) the Contract Documents, (3) attachments prepared by the State; (4) Contractor's Proposal; and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

40. Ownership of Documents and Materials.

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

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



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

#### 41. 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.

#### 42. 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.

#### 43. Progress Reports.

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

#### 44. Public Record.

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

#### 45. Renewal Option.

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

#### 46. 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.

#### 47. 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.

#### 48. 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.

#### 49. Termination for Convenience.

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

#### 50. Termination for Default.

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

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

#### 51. 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 *Indiana Department of Administration's 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 *Travel Policy* guidelines.

#### 52. 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.

53. Work Standards.

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

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

TEMPLATE

**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

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:  
<https://secure.in.gov/apps/idoa/contractsearch/>

**In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract for Public Works Project Number \_\_\_\_\_. 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**

**Department of Administration  
 Public Works Division**  
*For IDOA Commissioner if less than \$10,000,000*

By:

By:

Title:

Title: Director, Public Works Division

Date:

Date:

Electronically Approved by: Department of Administration  By: _____ (for) Rebecca Holwerda Commissioner <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>	
Electronically Approved by: State Budget Agency  By: _____ (for) Zachary Q Jackson, Director <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>	<p><b>APPROVED as to Form and Legality:</b>                  Office of the Attorney General</p> <p><b><i>Form approval has been granted by the Office of the Attorney General pursuant to IC 4-13-2-14.3(e) on August 23, 2023. FA 23-28</i></b></p>

This document prepared and reviewed by:

*Tammera J. Glickman*  
 Counsel, Indiana Department of Administration

**EXHIBIT 1** – to be included with CMc contract

TEMPLATE