

STANDARD CONTRACT PROVISIONS

The following terms and conditions will govern this contractual relationship and the VENDOR is bound by them and is responsible for reading and understanding them.

1. **BILLING:** VENDOR shall submit invoices on the schedule and with the detail required by the OAG.
 - (a) Invoices shall be signed by VENDOR. Record-keeping shall be in accordance with generally accepted accounting practices. If total billings are less than the total consideration allowable under this contract, only the lesser cost shall be paid by the OAG. All billings must be submitted to the OAG at the cover page address directed to the attention of the Contract Manager. By submitting an invoice, VENDOR certifies that the equipment, supplies and/or services provided meet all requirements of the contract and the amount billed is as allowed in this contract.
 - (b) VENDOR shall not bill for any taxes unless accompanied by proof the State is subject to the tax. If necessary, VENDOR may request the OAG's Illinois tax exemption number and federal tax exemption information.
 - (c) All invoices for supplies purchased or services performed and expenses (if billable) incurred through June 30 of any year must be submitted to the OAG no later than July 31 of that year; otherwise, VENDOR may have to seek payment through the Illinois Court of Claims (30 ILCS 105/25).

2. **PAYMENT:**
 - (a) The OAG shall not be liable to pay for any equipment and/or supplies provided and/or services rendered prior to the execution of this contract by the Parties, even if the effective date of the contract is prior to execution. VENDOR shall not commence billable work in furtherance of the contract prior to final execution of the contract.
 - (b) The approved invoice amount will be paid less any retainage and previous partial payments. Final payment shall be made upon determination by the OAG that all requirements under this contract have been completed, which determination shall not be unreasonably withheld.
 - (c) Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act (30 ILCS 540) and rules (74 Ill. Adm. Code 900) when applicable. This shall be VENDOR's sole remedy for late payments by the State. Payment terms contained on VENDOR's invoices shall have no force and effect.
 - (d) The OAG's total financial obligation under this contract shall not exceed the total consideration set forth in the contract and VENDOR agrees to fully complete the statement of work specified in the appropriate contract schedule and all obligations within that stated total consideration. If and when this contract is renegotiated to allow increased costs due to unforeseen contingencies not apparent at the time of execution, an amendment shall be agreed to only at the OAG's sole option.
 - (e) As a condition of receiving payment, VENDOR must (i) be in compliance with the contract; (ii) pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resource services, security guard and food services). VENDOR is responsible for contacting the Illinois Department of Labor (217/782-6206; <http://labor.illinois.gov>) to ensure

understanding of prevailing wage requirements; (iii) pay its suppliers and subcontractors according to the terms of their respective contracts; and (iv) provide lien waivers to the State upon request.

- (f) If the OAG in good faith determines that the VENDOR has failed to perform or deliver any service or product as required by this contract, the VENDOR shall not be entitled to any compensation under this contract until such service or product is performed or delivered. In this event, the OAG may withhold that portion of the VENDOR's compensation which represents payment for service or product that was not performed or delivered.
- (g) The State may set off any sum owed to the VENDOR on account of any debt owed to the State, unless otherwise required by law, in accordance with the State Comptroller Act (15 ILCS 405). The VENDOR agrees that this provision constitutes proper and timely notice under the law of setoff.

3. **PROGRESS PAYMENTS FOR AUDIT SERVICES:** If this contract is for audit or attestation services, unless otherwise specified in writing now within this contract or hereafter incorporated by reference, VENDOR may submit progress billings in the manner set forth below as follows:

- (a) At any time after the work has begun, VENDOR may submit a bill for actual hours worked, at the agreed contract average hourly rate. If the total amount of such bill is for an amount equal to or in excess of 50% of the total amount due under this contract, VENDOR shall be entitled to receive an amount equal to 50% of the total amount due under this contract. If the total amount of such bill is for an amount less than 50% of the total amount due under this contract, the VENDOR shall be entitled to receive the amount billed.
- (b) Upon delivery of all written draft deliverables and completion of assigned fieldwork, analysis and contractor drafting tasks as specified in this contract in a form acceptable to the OAG, VENDOR may submit a further bill for actual hours worked at the agreed average contract hourly rate. If the total amount of such bill is for an amount in excess of 75% of the total amount due under this contract, VENDOR shall be entitled to receive an amount equal to 75% of the total amount due under this contract, less any amount paid pursuant to the first progress billing. If the total amount of such bill is for an amount less than 75% of the total amount due under this contract, VENDOR shall be entitled to receive the amount billed, less any amount paid pursuant to the first progress billing.
- (c) Upon delivery of the final report or equivalent to the OAG and acceptance thereof, VENDOR may submit a final bill for the balance due for actual hours worked at the agreed average contract hourly rate pursuant to the terms of this contract. If the total cost exceeds the agreed total maximum contract payment, then the amount in excess of the contract maximum shall be deducted from the total cost of the work done so as to arrive at the net amount due in accordance with the total maximum contract payment specified in Section 2, above.

Throughout this contract, when the term "audit" is used it includes attestation services and agreed-upon procedures if such services are the subject of the engagement.

4. **COMPLIANCE WITH THE LAW AND PROFESSIONAL STANDARDS:**

- (a) The VENDOR, its employees, agents and subcontractors shall comply with all applicable federal, state and local laws, rules, ordinances, regulations, orders,

federal circulars and all license and permit requirements in the performance of this contract.

- (b) VENDOR shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.
- (c) VENDOR warrants that VENDOR, its employees, agents and subcontractors who would perform services requiring a license have and maintain any required license. If this contract is for audit or attestation services, VENDOR, its employees, agents and any subcontractor engaged by it must meet all requirements necessary to comply with applicable professional standards, including peer review, continuing education and independence.

5. **AUDIT/RETENTION OF RECORDS:** VENDOR and its subcontractors shall maintain books and records relating to the performance of the contract or subcontract and necessary to support amounts charged to the State under the contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the VENDOR for a period of 3 years from the later of the date of final payment under the contract or completion of the contract, and by the subcontractor for a period of 3 years from the later of the date of final payment under the subcontract or completion of the subcontract. The 3 year period shall be extended for the duration of any audit in progress during the term. Book and records required to be maintained under this Section shall be available for review or audit by the OAG, its representatives, and any other governmental entity with monitoring authority upon reasonable notice and during normal working hours. VENDOR and its subcontractors shall cooperate fully with any such audit or review. The VENDOR shall not impose a charge for audit or examination of the VENDOR's books and records. If any audit indicates overpayment to VENDOR, or subcontractor, the OAG shall adjust future or final payments otherwise due. If no payments are due and owing to VENDOR, or if the overpayment exceeds the amount otherwise due, VENDOR shall immediately refund all amounts that may be due to the OAG. Failure to maintain the books and records required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the contract for which adequate books and records are not available to support the disbursement. The VENDOR shall take reasonable steps to ensure that any subcontractor is in compliance with the requirements of this section.

6. **RETENTION OF WORKING PAPERS:** If this contract is for audit or attestation services, VENDOR shall maintain all working papers and reports, at VENDOR's expense, for a minimum of five years from the report release date, unless the firm is notified in writing by the OAG of the need to extend the retention period. VENDOR agrees to make the working papers available, upon the OAG's request and without limitation and at no charge, to: the OAG; the agency reviewed; successor auditors; any federal cognizant agency; parties designated by the federal or state government or others as part of a quality review process; auditors of entities of which the audited agency is a sub-recipient of grant funds; auditors of entities of which the audited entity is a component unit; members of the legislature and the public in compliance with the Illinois State Auditing Act, the Illinois Freedom of Information Act and regulations adopted under those Acts.

7. **SCHEDULE OF WORK AND REPORTING REQUIREMENTS:** Any work performed on State premises shall be done during the hours designated by the State and

performed in a manner that does not interfere with the State and its personnel. VENDOR shall immediately notify the OAG of any event that may have a material impact on VENDOR's ability to perform the contract.

8. **INDEPENDENT CONTRACTOR:** VENDOR shall, in the performance of this contract, be an independent contractor and not an agent or employee of, or joint venturer with, the State. All payments by the State shall be made on that basis.

9. **ASSIGNMENT AND SUBCONTRACTING:**

(a) This contract may not be assigned, transferred or subcontracted in whole or in part by the VENDOR without the prior written consent of the OAG. VENDOR shall describe within this contract the names and addresses of all authorized subcontractors utilized by VENDOR in the performance of this contract, together with the anticipated amount of money that each subcontractor is expected to receive pursuant to this contract. For purposes of this section, subcontractors are those specifically hired to perform all or part of the work or to provide the supplies covered by the contract.

(b) Any dispute between Vendor and any third party, including any subcontractor, shall be solely between such third party and Vendor, and the Agency shall be held harmless by Vendor. Vendor agrees to assume all risk of loss and to indemnify and hold the Agency and its officers, agents, and employees harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, for Vendor's failure to pay any subcontractor, either timely or at all, regardless of the reason.

10. **CONFIDENTIALITY:**

(a) Any documents or information obtained by VENDOR in connection with this contract shall not be provided to any third party unless disclosure is approved in writing by OAG. If, during the course of providing the services required by this Contract, VENDOR may access, use or disclose protected health information (PHI), as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA), then VENDOR agrees to execute a Business Associate Agreement with the OAG and to abide by federal law and regulations pertaining to the privacy and security of PHI.

(b) VENDOR is required to encrypt or redact any confidential information on all networks, servers, computers and other electronic media or storage devices. VENDOR may not transmit confidential information by any electronic means without encrypting the information or otherwise securing it in a manner that is accepted in the industry. Confidential information includes, but is not limited to, personal information as defined in the Personal Information Protection Act (815 ILCS 530/1 et seq.), and shall include any Social Security Number or Federal Employer Identification Number whether or not in conjunction with an individual's name.

(c) The Vendor shall immediately report to the OAG any unauthorized disclosure of confidential information.

(d) VENDOR agrees to assume without restriction any and all associated costs that arise from the State providing notification to any and all individuals affected or potentially affected by any event or incident considered an actual or potential

breach of security and includes personally identifiable information from or associated with the VENDOR'S network, computer equipment or any technology device containing such personally identifiable information or any written material that VENDOR is managing on behalf of the State and is, was or should have been under the control of the VENDOR. Any personally identifiable information that is protected under any Illinois or federal law will trigger this obligation to the extent that the information is breached while in the control of the VENDOR during the performance of this contract or while still in VENDOR'S possession or control following the termination of this contract. VENDOR must immediately notify the State of such a breach and agrees not to initiate any independent notification of those actually or potentially affected until a determination is made by the State as to the most appropriate method, timeline and content of such notice. The State reserves the right to make the final determination as to the timing and substance of any such notification.

- (e) VENDOR'S obligations regarding confidentiality under this contract shall survive termination of this contract.

11. USE OF WORK PRODUCT

- (a) All work performed or supplies created by VENDOR under this contract, whether written documents or data, goods or deliverables of any kind, shall be deemed work-for-hire under copyright law and all intellectual property and other laws, and the State of Illinois is granted sole and exclusive ownership to all such work, unless otherwise agreed to herein. VENDOR hereby assigns to the State all right, title, and interest in and to such work including any related intellectual property rights, and/or permanently waives any and all claims that VENDOR may have to such work including any so-called "moral rights" in connection with the work. VENDOR acknowledges the State may use the work product for any purpose. Confidential data or information contained in such work shall be subject to confidentiality provisions of this contract. VENDOR shall exclusively own any intellectual property rights (i) owned by VENDOR prior to the commencement of services or (ii) developed or acquired by VENDOR independent of the services provided under this contract; however, if incorporated into any work product provided under this contract, VENDOR'S intellectual property rights will not extend to (i) any portion of the State's material incorporated into any work product or (ii) to any information specific to any products or the State's business operations. The State will retain ownership of all intellectual property rights (such as copyrights and trade secrets) in or to any information and/or materials that the State supplies to VENDOR, or that the State develops in connection with this agreement.
- (b) To the extent VENDOR is providing the State with software under this contract, or a service that incorporates or includes software requiring a license for its proper use, and in consideration for a one time payment of any applicable license fee for such software, or any identified service fee that covers the use of the software, VENDOR hereby grants to the State and the State hereby accepts a non-transferable (except within State of Illinois government), nonexclusive, perpetual, irrevocable license to use the software. Continuous use of the license is subject only to the specific terms contained within any specific license terms attached to this contract.

- (c) Where the State is purchasing maintenance for software, previously purchased by the State from VENDOR, that is perpetual in nature, all rights granted in the original license agreement are unaffected by this contract.
- (d) Where the State purchases annual maintenance, following the initial term of the agreement for term licenses, all licenses granted in this contract shall continue in force during the annual maintenance period (s).
- (e) Upon completion or at the termination of this contract, all such documents and information shall, at the option of the OAG, be appropriately arranged, indexed and delivered to the OAG by VENDOR.
- (f) VENDOR's obligations regarding work product under this contract shall survive termination of this contract.

12. **SOLICITATION AND EMPLOYMENT:** VENDOR shall not employ any person employed by the State during the term of this contract to perform any work under this contract. VENDOR shall give notice immediately to the Auditor General if VENDOR solicits or intends to solicit State employees to perform any work under this contract.

13. **BACKGROUND CHECK:** VENDOR is responsible for ensuring that all contractor and subcontractor staff who will (1) be assigned to an OAG audit team or (2) have access to confidential information obtained from an OAG engagement (which may include reviewing partners, support staff, IT personnel, etc.) undergo a fingerprint-based criminal history background check before being assigned to an OAG engagement or related administrative functions. Costs related to criminal history background checks on contractor/subcontractor staff will be paid by VENDOR and are not reimbursable by the OAG. For purposes of this paragraph, the term "staff" includes all employees, interns, consultants, agents, or any other individuals - whether temporary or permanent, paid or unpaid, full- or part-time - who, by virtue of their affiliation with the VENDOR or the VENDOR's subcontractor: (i) will have access to State facilities; (ii) are specifically assigned to an OAG engagement; or (iii) will have access to confidential information obtained from an OAG engagement(s). VENDOR will be responsible for conducting the criminal history background checks in accordance with applicable laws, rules and procedures. VENDOR will be responsible for reporting the results of the criminal history background checks to the OAG and agrees to immediately remove from the audit team or related administrative functions any staff member that is deemed, in the OAG's discretion, to not be suitable to work on the OAG engagement and to replace that individual with another qualified staff member.

14. **RENEWAL:** This contract shall not be automatically renewable but shall terminate on June 30 of the fiscal year in which it was effective, or on the termination date actually specified in the contract. This contract may be renewed for successive terms, subject to the OAG's discretion, with the mutual written consent of both parties and subject to performance review, the satisfactory negotiation of terms (including price) and the annual availability of an appropriation. In no event will the total term of the contract, including the initial term, and renewal terms and any extensions, exceed 10 years.

15. **AVAILABILITY OF APPROPRIATIONS:** This contract is contingent upon and subject to the availability of funds. The State, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if: (1)

the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason; (2) the OAG's funding is reduced through reserves, or (3) the OAG determines, in its sole discretion, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. VENDOR will be notified in writing of the failure of appropriation or of a reduction or decrease. VENDOR's obligation to perform shall cease upon receipt of the notice.

16. INDEMNIFICATION AND LIABILITY:

- (a) The VENDOR agrees to indemnify and hold harmless the State of Illinois, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of (a) any breach or violation by VENDOR of any of its certifications, representations, warranties, covenants or agreements set forth herein, (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss, claimed to result in whole or in part from VENDOR's negligent performance, (c) any act, activity or omission of VENDOR or any of its employees, representatives, subcontractors or agents.
- (b) VENDOR, at its own expense, shall indemnify, defend and hold harmless the State, its officers, employees and agents against any claims based on any allegation that the use by the State of any software furnished by VENDOR, separately or as part of a service containing the software at issue, to the State under this contract infringes any third party patent, copyright or other proprietary right. If an action is brought against the State claiming that the authorized use of the software infringes such third party patent, copyright or other proprietary right, VENDOR will defend the State at VENDOR'S expense and pay the actual damages, attorney's fees, and costs finally awarded against the State in any proceedings arising from an infringement action. The State must promptly notify VENDOR in writing of any allegations of infringement made and permit the VENDOR, at VENDOR'S request and expense, to defend and conclude the action. If any claim arises or is reasonably likely to arise, VENDOR shall either procure, at VENDOR'S sole cost, the right for the State to continue to use the software or modify the software (without causing diminution in functionality) so that it does not infringe the third party's rights or if VENDOR is not able to accomplish either of the above, provide written notice to the State to that effect and refund to the State (within thirty days) all licensing fees and any prepaid maintenance fees paid by the State to the VENDOR and terminate the license for the software involved. This indemnity does not apply to the extent that infringement results from alterations or additions to the software made by the State that caused the infringement or use of the software in combination with any

other software, where the infringement would not have occurred without the other software.

- (c) Any indemnification obligation of the parties shall survive termination of this contract.
- (d) VENDOR shall assume risk of loss until delivery to the OAG's facility. VENDOR shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property and shall, at the State's request and expense, furnish to the State reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the State in obtaining recovery.
- (e) The OAG assumes no liability for actions of VENDOR and is unable to indemnify or hold VENDOR or any third party harmless for claims based on this contract or use of VENDOR provided supplies or services. Unless provided by law, VENDOR is not eligible for indemnity under the State Employee Indemnification Act (5 ILCS 350/1 et seq.). The OAG shall not be liable for any incidental, special, consequential or punitive damages.

17. WARRANTIES:

- (a) VENDOR warrants that the supplies and equipment furnished under this contract (i) will conform to the standards, specifications, drawings, samples or descriptions furnished by the State or furnished by the VENDOR and agreed to by the State, including but not limited to all specifications attached as exhibits hereto, (ii) will be merchantable, of good quality and workmanship, free from defects for a period of twelve months or longer if so specified in writing, and fit and sufficient for the intended use, (iii) will comply with all federal and state laws, regulations and ordinances pertaining to the manufacturing, packing, labeling, sale and delivery of the supplies, (iv) will be of good title and be free and clear of all liens and encumbrances, (v) will be new, unused, of most current manufacture and not discontinued, and (vi) will not infringe any patent, copyright or other intellectual property rights of any third party. VENDOR shall insure that all manufacturers' warranties are transferred to the State and shall provide a copy of the warranty. VENDOR agrees to reimburse the State for any losses, costs, damages or expenses, including without limitation, reasonable attorney's fees and expenses, arising from failure of the supplies to meet such warranties. These warranties shall be in addition to all other warranties, express, implied or statutory, and shall survive the State's payment, acceptance, inspection or failure to inspect the supplies.
- (b) VENDOR warrants that all services will be performed in a good and professional manner to industry standards by trained and competent personnel. VENDOR shall monitor the performance of each individual and shall reassign immediately any individual who is not performing to professional standards, who is not efficient or effective in performing the work of the contract, who is disruptive or not respectful of others in the workplace, or who in any way violates the contract or State policies. Vendor specifically acknowledges its responsibility to comply with provisions of the Illinois Human Rights Act (775 ILCS 5) and to prevent discrimination and sexual harassment by its employees, consultants, contractors and subcontractors against the State's employees and non-employees encountered in the workplace during the course of performing this contract. As required by Sections 2-105 (A) (4) and 2-109 (C) of the Act, VENDOR further agrees to have written sexual

harassment policies applicable to its employees and to conduct sexual harassment prevention training on at least an annual basis.

- (c) If VENDOR is providing the State with software under this contract, VENDOR warrants that the software will perform in all material respects in accordance with specifications relied upon by the State in entering into this contract for the period of time necessary to accomplish the intended purpose of the State in purchasing the software from VENDOR. VENDOR will replace any software which fails to meet this warranty. If VENDOR is unable to deliver a replacement, the State may terminate the license for the non-conforming software by providing written notice to VENDOR and returning the software to VENDOR for a full refund of the license fees and any associated maintenance fees paid for the software. VENDOR will not be responsible for replacing software that does not function properly to the extent that State employees or agents caused the software not to function properly through no fault of the VENDOR.
- (d) The VENDOR warrants that no person has been employed or retained to solicit and secure this contract upon an agreement or understanding for commission, percentage, brokerage or contingency except bona fide employees or selling agents maintained for the purpose of securing business.

18. INSURANCE: VENDOR shall, at all times during the term and any renewals, maintain and provide, upon request, a Certificate of Insurance naming the State as additional insured for all required bonds and insurance. Certificates may not be modified or canceled until at least 30 days notice has been provided to the State. VENDOR shall provide: (a) General Commercial Liability-occurrence form in the amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto, (Combined Single Limit Bodily Injury and Property Damage) in amount of \$1,000,000 per occurrence; and (c) Worker's Compensation Insurance in amounts required by law. Insurance shall not limit VENDOR'S obligation to indemnify, defend, or settle any claims.

19. TERMINATION OF CONTRACT:

- (a) Termination for Cause without Advance Notice: The OAG may terminate this contract, in whole or in part, for any of the following reasons effective immediately and without advance notice:
 - (i) In the event the VENDOR is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the contract effective as of the date on which the license or certification is no longer in effect;
 - (ii) The OAG determines that the actions, or failure to act, of VENDOR, its agents, employees or subcontractors have caused, or reasonably could cause, jeopardy to health, property or safety;
 - (iii) The VENDOR fails to comply with federal, state and local laws, rules, ordinances, regulations and orders, including laws protecting confidential information;
 - (iv) The VENDOR furnished any statement, representation or certification in connection with this contract or the RFP that is materially false, deceptive, incorrect or incomplete or the contract was obtained by fraud, collusion, conspiracy or other unlawful means;

- (v) The VENDOR is guilty of misrepresentation in connection with another contract for the sale of supplies or services to the State such that the VENDOR cannot reasonably be depended upon to fulfill obligations as a responsible VENDOR under other contracts with the State;
- (vi) The VENDOR is adjudged bankrupt; enters into receivership or makes a general assignment for the benefit of creditors due to insolvency;
- (vii) The contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States; or
- (viii) The VENDOR has notified the OAG that it is unable or unwilling to perform the contract.

In the event of termination for cause without advance notice, the State may seek any available legal or equitable remedies, including but not limited to monetary damages and reasonable attorney fees and costs.

- (b) Termination for Cause with Notice: The occurrence of any one or more of the following events shall constitute cause for the OAG to declare the VENDOR in default of its obligations under this contract:
 - (i) The VENDOR fails to perform, to the OAG's satisfaction, any material requirement of this contract or is in violation of a material provision of this contract;
 - (ii) The OAG determines that satisfactory performance of this contract is substantially endangered or that a default is likely to occur; or
 - (iii) The VENDOR fails to make substantial and timely progress toward performance of the contract.

The OAG shall provide written notice to the VENDOR requesting that the breach or noncompliance be remedied within the period of time specified in the OAG's written notice. If the breach or noncompliance is not remedied by that date, the OAG may either: (A) immediately terminate the contract without additional written notice; or (B) enforce the terms and conditions of the contract, and in either event seek any available legal or equitable remedies and damages.

- (c) Withholding Money to Compensate OAG for Damages: If a contract is terminated or rescinded for cause, the OAG may deduct from whatever is owed the VENDOR on that or any other contract an amount sufficient to compensate the OAG for any damage resulting from termination or rescission.
- (d) Termination for Convenience upon Notice: Following ten (10) days written notice, the OAG may terminate this contract in whole or in part, without the payment of any penalty or incurring any further obligation to the VENDOR.
- (e) Termination due to Lack of Funds or Change in Law: The OAG shall have the right to immediate termination of this contract without penalty by giving written notice to the VENDOR as a result of any of the following:
 - (i) Adequate funds are not appropriated or granted to allow the OAG to fulfill its obligations under this contract;
 - (ii) Funds are de-appropriated, reduced through reserves or not allocated;
 - (iii) Funds needed by the OAG, at the OAG's sole discretion, are insufficient for any reason or the OAG determines, in its sole discretion, that a reduction is necessary or advisable based upon actual or projected budgetary considerations;
 - (iv) There is a material alteration in the programs administered by the OAG; or
 - (v) The OAG's duties are substantially modified.

- (f) **VENDOR's Remedies in Event of Termination by OAG:** In the event of termination of this contract for any reason by the OAG, the OAG shall pay only those amounts, if any, due and owing to the VENDOR for usable work completed to the satisfaction of the OAG up to and including the date of termination and for which the OAG is obligated to pay pursuant to this contract. Payment will be made only upon submission of invoices and proper proof of the VENDOR's claim. This provision in no way limits the remedies available to the OAG under this Contract in the event of termination.
- (g) **VENDOR's Termination Duties:** The VENDOR, upon receipt of notice of termination or upon request of the OAG, shall:
 - (i) Cease work under this contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination or on the date specified in the termination notice, whichever is earlier. The report should describe the status of all work under the contract including, without limitation, results accomplished, conclusions resulting therefrom and other matters the OAG may require;
 - (ii) Immediately cease using and return to the OAG any personal property or materials, whether tangible or intangible, provided by the OAG to the VENDOR;
 - (iii) Comply with the OAG's instructions for the timely transfer of any active files and work product produced by the VENDOR under this contract;
 - (iv) Cooperate in good faith with the OAG, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
 - (v) Immediately return to the OAG any payments made by the OAG for services that were not rendered by the VENDOR.

- 20. **TIME IS OF THE ESSENCE AND WAIVER:** Time is of the essence with respect to VENDOR'S performance of this contract. Except as specifically waived in writing, failure by either Party to exercise or enforce a right does not waive that Party's right to exercise or enforce that or other rights in the future.
- 21. **CUMULATIVE RIGHTS:** The various rights, powers, options, elections and remedies of any party provided in this contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 22. **CONFLICTS OF INTEREST:** VENDOR has disclosed, and agrees it is under a continuing obligation to disclose to the OAG, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit VENDOR from having or continuing the contract. This includes, but is not limited to,

conflicts under the “Infrastructure Task Force Fee Prohibition” section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50) or the Auditor General’s implementing rules (44 Ill. Adm. Code 500), or which may conflict in any manner with the VENDOR's obligations under this contract. VENDOR shall not employ any person with a conflict to perform under this contract. If any elected or appointed State officer or employee, or the spouse or minor child of same, has any ownership or financial interest in the VENDOR or the contract, VENDOR certifies it has disclosed that information to the OAG and any waiver of the conflict has been issued in accordance with applicable law and rule.

23. **NOTICES:** Notices shall be in writing and may be delivered by any reasonable means. Notices by fax must show the date/time of successful receipt. Notices to VENDOR shall be sent to the person shown on the signature page. Notices to the OAG shall be sent to the Auditor General at the OAG's Springfield location. Notice of any name, street address, e-mail address or fax number change shall be given to the other in writing. Each such notice shall be deemed to have been provided at the time it is actually received.
24. **ENTIRE CONTRACT:** This contract, including any attachments or amendments, constitutes the entire agreement between the Parties concerning the subject matter of the contract. Amendments, modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this contract officially declared void, unenforceable, or against public policy shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination of this contract.
25. **NON-DISCRIMINATION:** In compliance with the State and Federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act and other applicable laws and rules, the State does not unlawfully discriminate in employment, contracts, or any other activity.
26. **APPLICABLE LAW:** This contract shall be construed in accordance with and is subject to the laws and rules of the State of Illinois. The Department of Human Rights Equal Opportunity requirements are incorporated by reference (44 Ill. Admin. Code 750). Any claim against the State arising out of this contract must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The State shall not enter into binding arbitration to resolve any contract dispute. The State of Illinois does not waive sovereign immunity by entering into this contract. The official text of cited statutes is incorporated by reference. (An unofficial version can be viewed at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>.) The only attorney who may represent the State is the Attorney General of the State of Illinois. Any appointment provision to the contrary is void.
27. **FORCE MAJEURE:** Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control and not due to its negligence, including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition. The non-declaring party may cancel the contract without penalty if performance does not resume within 30 days of the declaration.

28. **ANTITRUST ASSIGNMENT:** If VENDOR does not pursue any claim and cause of action it has arising under federal or state antitrust laws relating to the subject matter of the contract, then upon request of the Illinois Attorney General, VENDOR shall assign to the State all rights, title and interest in and to the claim or cause of action.
29. **AUTHORITY:** The Auditor General and his employees, when acting pursuant to this contract, are acting as State officers in their official capacity and not personally.
30. **CONFLICT OF PROVISIONS:** If any provision of this Exhibit is in conflict with any provisions in the contract or agreement to which it is attached, then the provisions of this Exhibit shall take precedence. In the event of a conflict between the State's and the VENDOR'S terms, conditions and attachments, the State's terms, conditions and attachments shall prevail.

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