

SAMPLE SERVICE AGREEMENT

THIS AGREEMENT is made between the Office of State Court Administrator (hereinafter referred to as the Court and () on the ___ day of _____ 2010.

WHEREAS, the Court desires to employ the services of () to conduct the development and implementation.

WHEREAS, () is willing to provide the services required.

NOW, THEREFORE, the parties do hereto agree as follows:

- I. Term.** The work under this Agreement shall commence on or before _____ and the project shall be completed on or before _____, unless the time for completion is extended by mutual agreement of the parties in writing as hereinafter provided.

- II. Services to be Performed by ().** () shall perform the services described in the Request for Proposals except as hereafter amended by the mutual agreement of the parties hereto.

- III. Compensation.**
 - (a) For the performance of the services hereunder, the Court shall pay () based upon the budget outlined in ('s) proposal.
 - (b) () agrees that its records which relate to compensation payable to () for the services rendered hereunder shall be available for review by the Court or its authorized representative during normal business hours with prior notice. Such records shall be retained by () for a period of three years from the date of termination of this Agreement during which period they will be available for review.
 - (c) All invoices and statements for services rendered should be prepared and forwarded to the Court as follows:

Louie Hentzen
State Court Administrator's Office
600 East Boulevard Ave Dept 180
Bismarck, ND 58505-0530
701-328-2238

All checks or warrants in payment of such invoices should be made payable to (). All payments should be mailed to:

IV. Independent Contractor Status. ('s) status for conduct of tasks described herein shall be as an independent contractor, not as an agent or employee of the Court. Any and all employees of () while engaged in the performance of any work or service required by () under this Agreement shall be considered employees of the () only and not the Court. Any and all claims that may arise under North Dakota Workers' Compensation Act on behalf of said employees while so engage, and any and all claims made by a third party as a consequence of any act or omission on the part of ('s) employees while so engaged in any of the work or services so provided to be rendered herein shall be the sole obligation and responsibility of ().

V. Acceptance Procedure. () shall render the reports and deliverables described in the Request for Proposal, under the terms and conditions thereof. The Court shall have a maximum of twenty (20) working days from the delivery of the final draft of the completed project prepared hereunder within which to respond in writing to such delivery. If the Court believes the completed project does not conform to the requirements of the Agreement, it shall notify () in writing thereof, within the above-mentioned twenty (20) days and shall indicate with particularity in what manner the project fails to conform. In the absence of such notice of non-conformance, acceptance of the work products will be presumed.

VI. Covenant Against Contingent Fees () warrants that is has not employed or retained any company or person other than bona fide employees working for () to solicit or secure this Agreement and that it has not paid or agreed to pay any company commission, percentage, brokerage fees, gifts, or other consideration contingent upon or resulting from the award of making this Agreement. For breach or violation of this warranty, the Court shall have the right to annul this Agreement without liability, or , in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

VII. Nondiscrimination in Employment. During the performance of this Agreement, () agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin.

VIII. Contingencies. In the event that, due to causes beyond the control and without the fault or negligence of (), said () fails to perform under this Agreement, such failure shall not constitute a default in performance, and shall make such other arrangements as shall be necessary and possible to facilitate contract completion.

IX. Termination by the Court. If for any reason other than the causes set forth in paragraph VIII above, () shall fail to fulfill its obligations under this Agreement, and such failure shall continue for ninety (90) days after written notice from the Court to (), which notice shall identify such failures specifically, then the Court shall have the right to terminate this agreement upon the court's delivery of a written termination notice to (); notwithstanding the foregoing, the Court shall have no right to terminate in the event that such failure can be remedied within such 90 day period and so long

as () commences cure within the foregoing 90 day period and thereafter diligently proceeds to remedy such failure. In any event, () shall have the right to receive just and equitable compensation for any satisfactory work completed prior to the date of such termination.

X. Termination by (). () may terminate this Agreement at any time for failure of the Court to comply with any material terms or conditions of this Agreement, giving written notice to the Court, effective ninety (90) days following receipt, provided, however, that the Court shall be provided a reasonable time within which to remedy such deficiencies.

XI. Renewal. This contract will not automatically renew.

XII. Access to Information and Facilities. The Court, recognizing that convenient and timely access to relevant data, information, personnel, and facilities is necessary to the performance of the obligations of () in the discharge of its duties under this Agreement, shall assist, or otherwise aid () in the procurement of such data or information and/or access to such personnel and facilities as necessary for () to perform its duties under the terms and conditions of this Agreement.

XIII. Publications. () may publish information, interim and final reports produced in the conduct of this project with the written permission of the Court.

XIV. Copyrights. The Court retains all rights, title and interest in and to all data, report materials, reports, copyrights, artwork, illustrations, and other original materials that are compiled or result from this project.

XV. Governing Law. The laws of the state of North Dakota shall govern the validity, construction, interpretation, and effect of this Agreement.

XVI. Conflicts in Documents. Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the documents must control in this order of precedence: (i) the terms of this Agreement, as may be amended; (ii) the State's Request for Proposal; and (iii) the proposal submitted by ().

XVII. Modification. This Agreement constitutes the final, integrated expression of the Agreement of () and the Court. No amendments or changes may be made to the terms and conditions of this Agreement (including, but not limited to scope of work, deliverables, timetable or terms of agreement, price, cost, budgetary adjustments or other information including names, addresses and telephone numbers of persons to contact for submission and approval of proposed changes), without the mutual, written consent of the parties hereto.

a. Changes in work

() shall make no change in services unless in pursuance of a written request from the Court authorizing () to proceed with the change.

b. Notification by () of work involving extra cost

If () believes that any changes or instructions proposed by Court involve extra work, extra cost, or an extension of time that was not contemplated by the parties, () shall so notify the Court in writing within five days after such discovery. () shall not proceed to execute such work until making this notification and receiving written approval to proceed with such work.

c. Extra work defined

For purposes of this Agreement, extra work shall mean work the performance of which is found necessary for proper completion of the project, but which is not covered by the proposal and for which no means of payment, direct or indirect, has been provided in the Agreement, and for which special remuneration, by an extra price equitable adjustment or by other consideration, in any case to be negotiated, shall be paid to ().

XVIII. Waivers. The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIX. Severability. If any term of this contract is declared to be illegal or unenforceable by a court having jurisdiction, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XX. Representatives of Contracting Parties. The following designated parties, notwithstanding conflicting provisions found in the Proposal incorporated herein, shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the Court:

Louie Hentzen
Office of the State Court Administrator
600 E Boulevard Ave Dept 180
Bismarck, ND 58505-0530
701-328-2238

(b) Representing ():

- XXI. Maintenance, Access and Examination of Records.** If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three (3) years from the date of any resulting final settlement.
- XXII. Confidentiality.** Absent a court order, () agrees not to use or disclose any information it receives from the Court under this Agreement that the Court has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the Court. Absent a court order, the Court agrees not to disclose any information it receives from () that () has previously identified as confidential and which the Court determines in its sole discretion is protected from public disclosure. The duty of the Court and () to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.
- XXIII. Insurance.** () represents and warrants that it is now maintain, (i) general liability insurance carriers, (ii) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (iii) adequate insurance against liability on account of damage to persons or property; and (iv) adequate insurance under all applicable worker's compensation laws. () will furnish such certificates with respect to its insurance as the Court may from time to time require, provided, however, that the Court shall not request evidence of insurance under this Agreement more than two times during the Term of this Agreement.
- XXIV. Prohibition Against Assignment.** Notwithstanding any other provision of this Agreement, () warrants that is shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust, company, or other financing institution.
- XXV. Indemnity.** () agrees to defend, indemnify and hold harmless the Court, its agencies, officers and employees from any claims of any nature, including all costs, expenses and attorneys' fees, which may in any manner result from or arise from ('s) performance of this Agreement, except for claims resulting from or arising out of the Court's sole negligence, and except that professional liability claims shall be limited to the ('s) negligence arising from professional errors and omissions. The legal defense provided by () to the Court under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Court is necessary. () also agrees to defend, indemnify, and hold the Court harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement
- XXVI. Attorney Fees.** If a dispute arises under the terms of this Agreement or if any payment required by this Agreement is not paid when due and the matter is turned

over to an attorney, the prevailing party in the dispute will be awarded by the court its reasonable attorney fees in addition to the other damages and costs.

()

BY: _____
TITLE: _____
DATE: _____

Office of State Court Administrator

BY: _____
TITLE: _____
DATE: _____