

GENERAL ADMINISTRATION

AGENDA

February 19, 2025

10:00 AM

Executive Director's recommendation for the Commission to enter into a contract with Savant Learning System, Inc. ("Virtual Academy") which provides the Commission access to Virtual Academy's online training services.

Executive Director's recommendation to approve Josh Smith to travel to and attend the FRA Railroad Safety Training in Atlanta, Georgia from March 30, 2025 to April 4, 2025 with all expenses to be paid by the Commission.

Executive Director's recommendation to approve Nathan Wolfgang to travel to and attend the FRA Railroad Safety Training in Atlanta, Georgia from March 30, 2025 to April 4, 2025 with all expenses to be paid by the Commission.

Executive Director's recommendation to approve Dillon Keiffer-Johnson to travel to and attend the FRA Railroad Safety Training in Atlanta, Georgia from March 30, 2025 to April 4, 2025 with all expenses to be paid by the Commission.

VIRTUAL ACADEMY SOLUTION AGREEMENT

Cover Sheet

THIS VIRTUAL ACADEMY SOLUTION AGREEMENT (comprising this Cover Sheet and the Terms and Conditions attached hereto, collectively, the “Agreement”) is entered into as of the date of the later signature below (“Effective Date”) by and between Virtual Academy, a division of Savant Learning Systems, Inc. (“Virtual Academy”), and the State 9-1-1 Board identified below (“State 9-1-1 Board”).

A. WHEREAS, Virtual Academy has developed a comprehensive suite of content, products and services (each individually, a “Solution” and, collectively, the “Solutions”) designed to permit the State 9-1-1 Board to offer training online, which Solutions include Virtual Academy’s custom on-line training management system (“TMS”), currently offered under the brand “Virtual Academy.”

B. WHEREAS, the State 9-1-1 Board desires to arrange for access to and use of the TMS and the additional Solutions specifically elected by State 9-1-1 Board (“Elected Solution(s)”) as indicated below, and Virtual Academy is willing to provide such Elected Solutions, subject to the terms and conditions herein.

Elected Solutions

Package Options	Number of Users	Total Cost
TMS Full access 3-year Contract	800 users	\$34,200 annually
CTO	800 users	\$8,000 annually
Total 3-year Cost:		\$126,600

VIRTUAL ACADEMY, A DIVISION OF SAVANT LEARNING SYSTEMS, INC.

By: _____
(signature)
Name: Kelly Sanders-Kelley
Title: 9-1-1 National Director
Date: _____

(department name)
By: _____
(signature)
Name: _____
Title: _____
Date: _____

VIRTUAL ACADEMY SOLUTION AGREEMENT – TERMS AND CONDITIONS

1. TMS Access. Virtual Academy hereby State 9-1-1 Board a non-exclusive, limited, revocable, non-transferable, non-sublicenseable right and license to access the TMS, subject to the terms of this Agreement, solely in connection with State 9-1-1 Board's offering of the training to its employees and affiliates.

2. Virtual Academy Warranty. Virtual Academy warrants that (i) it will use commercially reasonable efforts to ensure that the TMS, courseware, instructional materials, software or source code do not contain any malware or other code that could cause damage to State 9-1-1 Board's computer systems or data; and (ii) it owns and/or has all necessary rights to use and to permit the use of the TMS, courseware, instructional materials, software or source code as provided herein. Virtual Academy makes no other warranty, express or implied, in connection with the Solutions, and hereby disclaims and excludes any warranty of fitness for a particular purpose and/or warranty of merchantability.

3. Access. Virtual Academy will use commercially reasonable efforts to provide continuous access to the Virtual Academy platform, excluding planned maintenance periods and unplanned downtime beyond the reasonable control of Virtual Academy. State 9-1-1 Board understands that Virtual Academy cannot guarantee access at all times. Virtual Academy shall not be responsible for any failure by State 9-1-1 Board or its employees to gain access to the Solutions due to causes beyond Virtual Academy's reasonable control, including power outages, and damage to or defects in computer hardware.

4. Maintenance and Software Upgrades. Maintenance and software upgrades to the TMS, courseware, instructional materials, software, or source code may be performed at the discretion of Virtual Academy. Virtual Academy agrees to provide State 9-1-1 Board with reasonable advance notice of scheduled maintenance and/or software upgrades.

5. Compliance with Certain Regulatory Requirements.

a. Privacy Protection. Each party will ensure that employee grades and/or other protected information related to this Agreement will be treated as confidential and protected from disclosure as required by federal and applicable state law. Employee grades are the property of State 9-1-1 Board and State 9-1-1 Board shall be responsible for maintenance of such data.

6. Confidentiality. To the extent permitted by applicable law, the terms of this Agreement are confidential. Except as required by law, neither party shall furnish confidential information of the other party to any unauthorized person or entity. Nothing in this section prevents Virtual Academy from issuing a mutually acceptable press release or naming State 9-1-1 Board as a client in advertising materials and/or as a case study of the TMS, courseware, instructional materials, software, or source code State 9-1-1 Board further authorizes Virtual Academy to monitor performance and/or service level information and data associated with State 9-1-1 Board's use of the TMS, courseware, instructional materials, software or source code, and Virtual Academy will seek authorization State 9-1-1

Board to make such performance and/or service level information and data publicly available for promotional and/or advertising purposes.

7. Intellectual Property. Virtual Academy owns all right, title and interest in the intellectual property embodied in or related to the TMS, courseware, Solutions, instructional materials, software or source code (including any and all tangible and intangible ideas, items, works of authorship and other materials resulting from such Solutions, such as all works of authorship forming any part of the TMS, courseware, Solutions, instructional materials, software or source code, whether or not registered or capable of registration, including but not limited to the source code, any graphical or pictorial works such as but not limited to logos, graphical employee interfaces, architecture and also including any copyrights, trade secrets, patents, trademarks, know-how and/or specifications). Virtual Academy shall retain ownership over all instructional and/or reference content, excluding employee data and supplemental State 9-1-1 Board's or training materials uploaded by State 9-1-1 Board or any of its employees, agents, or by users of the TMS.

8. Proprietary Rights and Restrictions. Virtual Academy holds and retains all right, title, and interest in its software, original applications, documentation, materials, and all other intellectual property. Nothing in this Agreement is intended to transfer any ownership rights to. State 9-1-1 Board shall not:

a. Decompile, disassemble, or reverse engineer, or attempt to decompile, disassemble or reverse engineer, the TMS, courseware, instructional materials, software or source code;

b. Modify or attempt to modify the TMS, courseware, instructional materials, software or source code;

c. Rent, lease, license, assign, sell or otherwise provide access to any unauthorized individual or entity to Virtual Academy's intellectual property, including the TMS, courseware, Solutions, instructional materials, software or source code, and also including any copyrights, trade secrets, patents, trademarks, know-how and/or specifications on a temporary or permanent basis;

d. Upload, or attempt to upload, to Virtual Academy's servers any information, material or content that infringes upon any third party copyright, trademark, patent or trade secret, or material or content that is in violation of any law of the United States;

9. Trademarks. During the term of this Agreement (and thereafter, for historical purposes), State 9-1-1 Board grants Virtual Academy a limited, non-exclusive license to use State 9-1-1 Board trademarks, as designated in writing by State 9-1-1 Board solely for the purpose of fulfilling Virtual Academy's obligations and exercising Virtual Academy's rights hereunder.

10. Assignment. State 9-1-1 Board may not assign this Agreement, or any of its rights or obligations hereunder, in whole or in part, by operation of law or otherwise, without the express written consent of Virtual Academy, which Virtual Academy may withhold in its sole discretion.

11. Responsibilities of State 9-1-1 Board State 9-1-1 Board agrees to perform the following:

a. State 9-1-1 Board will provide to Virtual Academy a list of enrolled employees and employee identification as is needed for Virtual Academy to perform its obligations under this Agreement. The list provided by State 9-1-1 Board will reflect employees enrolled as of the first day of implementation and will be provided to Virtual Academy a minimum of five (5) days prior to the initiation of implementation.

b. State 9-1-1 Board will arrange and provide for a qualified employee to administer and oversee State 9-1-1 Board's use and implementation of the TMS, courseware, instructional materials, software, source code and the Solutions in connection with the training. State 9-1-1 Board will ensure that all such employees participate in the training and orientation provided by Virtual Academy with respect to the TMS, courseware, Solutions, instructional materials, software or source code. State 9-1-1 Board will take such steps as necessary to ensure that employees respect Virtual Academy copyrights and proprietary information.

c. State 9-1-1 Board shall exercise the sole decision-making authority in the (i) appointment of training employees, (ii) admission of employees to the training, (iii) evaluation of employee performance, and (iv) decisions to award course credit and/or training credentialing.

d. State 9-1-1 Board warrants that it has policies and procedures in place to comply with, and will comply with, all applicable federal, state, and local laws and regulations with respect to the training. Without limiting the foregoing State 9-1-1 Board will be responsible for compliance with all applicable state accrediting agency requirements and state law authorizations and requirements.

e. State 9-1-1 Board will provide such other reasonable administrative support for the implementation and functioning of the TMS and the Solutions not otherwise specifically set forth in this Agreement as being the responsibility of Virtual Academy.

f. State 9-1-1 Board will make reasonable efforts to prevent unauthorized access to the TMS, courseware, instructional materials, software or source code and to maintain confidentiality of login information used by employees and instructors to access the TMS, courseware, instructional materials, software or source code.

g. Any additional responsibilities of Virtual Academy and with respect to the Solutions shall be mutually agreed in writing.

12. Indemnification.

a. To the extent permitted by applicable law, each party shall indemnify and hold harmless the other party, including its employees, directors, employees and agents, against any losses, damages, or expenses (including, without limitation, reasonable attorneys' fees) arising from any claim, suit or proceeding brought by a third party against the other party and arising out of the indemnifying party's (i) gross negligence, willful misconduct or fraud; (ii) breach of the terms of this Agreement or (iii) failure to comply with any applicable law.

b. Without limiting the foregoing, State 9-1-1 Board agrees to indemnify and hold harmless Virtual Academy, and its employees, directors, employees and agents from all losses, damages, expenses and costs, including reasonable attorney's fees, resulting from or related to:

i. Any claim brought against Virtual Academy or its employees, directors, employees or agents alleging violation of a patent, copyright, trademark or trade secret based on any material that is generated by, altered by, modified by, distributed by, copied by or uploaded by any trainer, employee or staff member of State 9-1-1 Board or any individual or entity who gains unauthorized access to the TMS, courseware, instructional materials, software or source code due to a failure on behalf of State 9-1-1 Board to make reasonable efforts to prevent unauthorized access thereto or to maintain confidentiality of login information used by employees and instructors to access same;

ii. Any infringement of third party copyrights or patents by State 9-1-1 Board 's management; and/or

iii. Any damages caused by materials uploaded or distributed via Virtual Academy's system and/or the training by the State 9-1-1 Board, including those materials which may: (x) contain malware; (y) include content determined to be illegal, including file sharing of third party intellectual property; or (z) contain defamatory content.

13. Term. The term of this Agreement will commence on the Effective Date and continue in effect thereafter, unless terminated earlier as provided herein, for one (1) year. Notwithstanding the foregoing, unless Virtual Academy State 9-1-1 Board provides written notice of its intent not to renew at least sixty (60) days prior to the end of the applicable term, this Agreement shall renew for an additional (1) year term or as otherwise negotiated.

14. Termination for Breach. In the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement upon provision of thirty (30) days' written notice to the breaching party, provided that such breach has not been cured within said period. If Virtual Academy terminates this Agreement due to State 9-1-1 Board's failure to make adequate or timely payment, all Solutions may be terminated at Virtual Academy's option. In the event of termination following such breach, Virtual Academy may, at its option, (a) charge a reinstatement fee to reinstate support Solutions; or (b) decline to reinstate support Solutions until breach is cured. In addition,

either party may terminate this Agreement, effective immediately upon notice, if the other party files for bankruptcy protection, is determined to be bankrupt or insolvent or enters into any bankruptcy or insolvency proceeding, except that Virtual Academy shall continue to provide courses still in session in accordance with the terms of this Agreement to the extent legally permitted to do so.

15. Effect of Termination. Virtual Academy also agrees that in case of termination by either party, it will make reasonable efforts to protect employee data, subject to the terms of this Agreement. Notwithstanding anything herein to the contrary, as of the date that is twelve (12) months following any expiration or termination of this Agreement, use data may be destroyed at the discretion of Virtual Academy. Upon the expiration or any termination of this Agreement the following Sections shall survive: 5, 6, 7, 8, 9, 11; 12; 17; 18; 20 and 21.

16. Force Majeure. Virtual Academy warrants that it shall use commercially reasonable efforts to maintain Solutions and protect data. Virtual Academy shall not be liable for any failure to perform its obligations where such failure is a result of acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout, interruption or failure of electricity, telephone, or internet service.

17. Mediation and Arbitration. Any controversy between the parties to this Agreement involving the construction or application of any of the terms, provisions, or conditions of this Agreement shall, on written request of either party served on the other, be submitted to mediation with each party paying for half of the total cost of the mediator. If mediator is unsuccessful, suite may be filed in a court of competent jurisdiction in the state of _____.

18. Governing Law. This Agreement is governed by the laws of the State _____. Legal action arising from this Agreement shall only be filed in the State of _____. The parties waive any right to a jury trial.

19. Legal and Regulatory Changes. If any law or regulation governing this Agreement, the Solution or the training changes such that any aspect of this Agreement, the Solution or any training as then provided does not comply with such law or regulation, the Parties shall amend this Agreement solely to the extent necessary to comply with such law or regulation.

20. Entire Agreement. This Agreement contains the entire Agreement between the parties and supersedes all prior agreements.

21. Amendment. No amendment, modification, termination or waiver of any provision of this Agreement is effective unless it is in writing and signed by both parties.

22. Severability. If a court declares any part of this Agreement void or unenforceable, the remaining terms and provisions shall remain in force.

23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

SCOPE OF WORK

NEBRASKA PUBLIC SERVICE COMMISSION



This Agreement is entered into between the Nebraska Public Service Commission (the "Commission") and Contractor (Savant Learning System, Inc ("Virtual Academy")).

1. PURPOSE AND BACKGROUND

Purpose.

WHEREAS, Virtual Academy has developed a comprehensive suite of content, products and services (each individually, a "Solution" and, collectively, the "Solutions") designed to permit the Commission to offer training online, which Solutions include Virtual Academy's custom on-line training management system ("TMS"), currently offered under the brand "Virtual Academy."

WHEREAS, the Commission desires to arrange for access to and use of the TMS and the additional Solutions specifically elected by Commission ("Elected Solution(s)") as indicated below, and Virtual Academy is willing to provide such Elected Solutions, subject to the terms and conditions attached to and incorporated within this contract.

2. SERVICES

Services Generally.

Package Options	Number of Users	Total Cost
TMS Full access 3-year Contract	800 users	\$34,200 annually
CTO	800 users	\$8,000 annually
Total 3-year Cost:		\$126,600

Public Service Commission Responsibilities

1. The Commission will provide to Virtual Academy a list of enrolled employees and employee identification as is needed for Virtual Academy to perform its obligations under this Agreement.

SCOPE OF WORK

NEBRASKA PUBLIC SERVICE COMMISSION



The list provided by the Commission will reflect employees enrolled as of the first day of implementation and will be provided to Virtual Academy a minimum of five (5) days prior to the initiation of implementation.

2. The Commission will arrange and provide for a qualified employee to administer and oversee the use and implementation of the TMS, courseware, instructional materials, software, source code and the Solutions in connection with the training. The Commission will ensure that all such employees participate in the training and orientation provided by Virtual Academy with respect to the TMS, courseware, Solutions, instructional materials, software or source code. The Commission, to the extent reasonable, will take such steps as necessary to ensure that employees respect Virtual Academy copyrights and proprietary information.
3. The Commission shall exercise the sole decision-making authority in the (i) appointment of training employees, (ii) admission of employees to the training, (iii) evaluation of employee performance, and (iv) decisions to award course credit and/or training credentialing.
4. The Commission warrants that it has policies and procedures in place to comply with, and will comply with, all applicable federal, state, and local laws and regulations with respect to the training. Without limiting the foregoing the Commission, to the extent authorized by law, will be responsible for compliance with all applicable state accrediting agency requirements and state law authorizations and requirements.
5. The Commission will provide such other reasonable administrative support for the implementation and functioning of the TMS and the Solutions not otherwise specifically set forth in this Agreement as being the responsibility of Virtual Academy.
6. The Commission will make reasonable efforts to prevent unauthorized access to the TMS, courseware, instructional materials, software or source code and to maintain confidentiality of login information used by employees and instructors to access the TMS, courseware, instructional materials, software or source code.

Contractor Responsibilities

1. Contractor will provide full access to their custom on-line training management system and CTO access and provide the Commission a non-exclusive, limited, revocable, non-transferable, non-sublicensable right and license to access the TMS, subject to the terms of this Agreement, solely in connection with the Commission's offering of the training to its employees and affiliates.
2. Warranty. Virtual Academy warrants that (i) it will use commercially reasonable efforts to ensure that the TMS, courseware, instructional materials, software or source code do not contain any malware or other code that could cause damage to the Commission's computer systems or data; and (ii) it owns and/or has all necessary rights to use and to permit the use of the TMS, courseware, instructional materials, software or source code as provided herein. Virtual Academy makes no other warranty, express or implied, in connection with the Solutions, and hereby disclaims and excludes any warranty of fitness for a particular purpose and/or warranty of merchantability.

SCOPE OF WORK

NEBRASKA PUBLIC SERVICE COMMISSION



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3. Access. Virtual Academy will use commercially reasonable efforts to provide continuous access to the Virtual Academy platform, excluding planned maintenance periods and unplanned downtime beyond the reasonable control of Virtual Academy. The Commission understands that Virtual Academy cannot guarantee access at all times. Virtual Academy shall not be responsible for any failure the Commission or its employees to gain access to the Solutions due to causes beyond Virtual Academy's reasonable control, including power outages, and damage to or defects in computer hardware.
 4. Maintenance and Software Upgrades. Maintenance and software upgrades to the TMS, courseware, instructional materials, software, or source code may be performed at the discretion of Virtual Academy. Virtual Academy agrees to provide the Commission with reasonable advance notice of scheduled maintenance and/or software upgrades.

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



The following terms govern the contractual relationship created between the Nebraska Public Service Commission ("NPSC") and the Contractor identified in the attached Scope of Work. The definitions used herein govern the words used in these Terms, or that may be used in a Contract Award, Scope of Work, or Contractor Proposal, or any other attached document, unless specifically defined therein.

DEFINITIONS

Breach: Violation of a contractual obligation by failing to perform or repudiation of one's own promise.

Change Order: Document that provides an addendum and/or amendments to an executed purchase order or contract.

Contract: The complete agreement between the parties, as further delineated in **GENERAL INTERPRETATION**, below.

Default: The omission or failure to perform a contractual duty.

Extension: Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period".

Mandatory/Must: Required, compulsory, or obligatory.

May: Discretionary, permitted; used to express possibility.

Party: The NPSC or the Contractor, as applicable.

Proposal: A proposal provided by the Contractor to complete work performed under the Contract.

Shall/Will/Must: An order/command; mandatory.

Scope of Work: A list of duties and deliverables defined by the NPSC for Contractor to complete under the Contract.

Subcontractor: Individual or entity with whom the Contractor enters a contract to perform a portion of the work awarded to the Contractor. Does not include entities who are providing general ancillary services for the Contractor's operations.

Termination: Occurs when either Party, pursuant to a power created by agreement or law, puts an end to the Contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

Will: See Mandatory/Shall/Will/Must.

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



GENERAL TERMS

ORDER OF PREFERENCE AND INTERPRETATION

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference:

1. Amendments to the Contract, with the most recently dated amendment having highest priority;
2. These Terms;
3. The Contract Award;
4. Any attached Scope of Work; and
5. Any attached Contractor proposal or additional terms.

These documents constitute the entirety of the Contract. Any ambiguity or conflict in the Contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

Furthermore, the following rules will apply regarding multiple similar clauses contained in any documents:

- If only one Party to the Contract has a particular clause, then that clause shall control;
- If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
- If both Parties have a similar clause, but the clauses conflict, the NPSC's clause shall control.

GOVERNING LAW

Notwithstanding any other provision of this Contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this Contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this Contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the Contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the Contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the Contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

BEGINNING OF WORK

The Contractor shall not commence any billable work until a valid contract has been fully executed by the NPSC and the Contractor.

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



AMENDMENT

This Contract may be amended in writing, within scope, upon the agreement of both parties.

CHANGE ORDERS

The NPSC and the Contractor, upon the written agreement, may make changes to the Contract within the general scope of the Scope of Work as applicable. Changes may involve specifications, the quantity of work, or such other items as the NPSC may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the Contract shall not be deemed a change. The Contractor may not claim forfeiture of the Contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The NPSC shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the NPSC, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the Contract and law.

NOTICE OF POTENTIAL CONTRACTOR BREACH

If Contractor breaches the Contract or anticipates breaching the Contract, the Contractor shall immediately give written notice to the NPSC. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The NPSC may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the NPSC does not forfeit any rights or remedies to which the NPSC is entitled by law or equity, or pursuant to the provisions of the Contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

CONTRACT MANAGEMENT AND BREACH

1. *Deliverable Approval Process*

The Commission must review all deliverables submitted by Contractor. The Commission must approve a deliverable submitted by Contractor if it is of sufficient quality and meets the requirements in the Contract. Approval of a deliverable must be communicated by the Commission to Contractor in writing within a reasonable time. The Commission shall not disburse payment for a deliverable until the deliverable is approved.

The Commission must reject the deliverable submitted by Contractor if it is not of sufficient quality or does not meet the requirements in the Contract. Rejection of a deliverable must be communicated by the

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



Commission to Contractor, in writing, within a reasonable time. The written communication must include the Commission's reasons for rejection.

Within a reasonable time established by the Commission, Contractor may correct the defects identified and resubmit the rejected deliverable. Any corrections or improvements requested by the Commission are not changes in the scope of the Contract. If a rejected deliverable requires more than two corrections, the Commission may permanently reject the deliverable and deny payment for the deliverable. Nothing in this section limits any other remedies available to the Commission under the Contract or at law.

2. *Corrective Action Plan*

If Contractor fails to meet the Scope of Work as set forth in the Contract, NPSC may, within its sole discretion, require Contractor to complete a Corrective Action Plan (hereinafter "CAP"). NPSC shall set a deadline for the CAP to be provided to NPSC, but shall provide Contractor reasonable notice of said deadline. In its notice, NPSC shall identify each issue to be resolved. The CAP will include, but is not limited to, a written response noting the steps being taken by Contractor to resolve each issue(s), including a date that the issue(s) will be resolved.

If Contractor fails to provide a CAP by the deadline set by NPSC, fails to provide NPSC with a CAP demonstrating that the issues regarding performance will be remedied, or fails to meet the deadline(s) set in the CAP for resolution of the issue(s), NPSC may withhold payments (for the work or deliverables) related to the issues identified by NPSC, or exercise any other remedy set forth in this Contract or available under law.

3. *Suspension of Services*

The NPSC may, at any time and without advance notice, require Contractor to suspend any or all activities provided under this Contract. A suspension may be the result of a reduction in federal or state funds, budget freeze, emergency, contract compliance issues, investigation, or other reasons not stated here. In the event of such suspension, the NPSC Executive Director, or designee, will issue a written Stop Work Order to the Contractor. The Stop Work Order will specify which activities are to be immediately suspended, the reason(s) for the suspension, and, if practicable, the known duration period of the suspension.

Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the order during the period of suspension.

The NPSC may extend the duration of the suspension by issuing a modified Stop Work Order, which must state the new end date of the suspension and the reason for the extension. The suspended activity may resume when (i) the suspension period identified in the Stop Work Order has ended or (ii) when the NPSC Executive Director, or designee, has issued a formal written notice cancelling the Stop Work Order or directing Contractor to resume partial services.

4. *Breach*

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



Either Party may terminate the Contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the Contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by email to the contact identified in the Contract Award for Notices. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the Contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the NPSC may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

NON-WAIVER OF BREACH

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

SEVERABILITY

If any term or condition of the Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the provision held to be invalid or illegal.

INDEMNIFICATION

1. General

The Contractor agrees to defend, indemnify, and hold harmless the NPSC and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the NPSC for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this Contract, except to the extent such Contractor liability is attenuated by any action of the NPSC which directly and proximately contributed to the claims.

2. Intellectual Property

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the NPSC gives the

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the NPSC's use of the Licensed Software without the NPSC's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the NPSC's use of any intellectual property for which the Contractor has indemnified the NPSC, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the NPSC's behalf to provide the necessary rights to the NPSC to eliminate the infringement, or provide the NPSC with a non-infringing substitute that provides the NPSC the same functionality. At the NPSC's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the NPSC may receive the remedies provided under these Terms.

3. *Personnel*

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

SELF-INSURANCE

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

ASSIGNMENT, SALE, OR MERGER

Either Party may assign the Contract upon mutual written agreement of the other Party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the NPSC in executing amendments to the Contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the Contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this Contract and perform all obligations of the Contract.

FORCE MAJEURE

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the Contract due to a natural or manmade event outside the control and not the fault of the affected Party (“Force Majeure Event”). The Party so affected shall immediately make a written request for relief to the other Party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party’s own employees will not be considered a Force Majeure Event.

CONFIDENTIALITY

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

EARLY TERMINATION

The Contract may be terminated as follows:

1. The NPSC and the Contractor, by mutual written agreement, may terminate the Contract at any time.
2. The NPSC, in its sole discretion, may terminate the Contract for any reason upon thirty (30) calendar day’s written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the Contract. In the event of termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The NPSC may terminate the Contract immediately for the following reasons:
 - a. if directed to do so by statute;
 - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor’s assets has been appointed by a court;
 - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the Contract by its Contractor, its employees, officers, directors, or shareholders;
 - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



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- f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
 - g. Contractor intentionally discloses confidential information;
 - h. Contractor has or announces it will discontinue support of the deliverable; and,
 - i. In the event funding is no longer available.
4. The NPSC may also terminate this contract if this Contract was the result of a Request for Proposal and the NPSC discovers that an ethical violation has been committed. These violations include, but are not limited to:
 - a. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
 - b. Utilizing the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
 - c. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity: Submitting a solicitation response on behalf of another Party or entity; and
 - d. Colluding with any person or entity to influence the bidding process, submit sham solicitation responses, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the solicitation response, or prejudice the Commission.
 5. The Contractor shall include a clause containing the same requirements as subsection 4, above, in any subcontract entered into for the exclusive purpose of performing this Contract.

CONTRACT CLOSEOUT

Upon contract closeout for any reason the Contractor shall within thirty (30) days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the NPSC;
2. Transfer ownership and title to all completed or partially completed deliverables to the NPSC;
3. Return to the NPSC all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor Contractor, person, or entity in the assumption of any or all of the obligations of this Contract;
5. Cooperate with any successor Contractor, person, or entity with the transfer of information or data related to this Contract;
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the NPSC has no legal claim.

SURVIVAL

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



All provisions hereof that by their nature are to be performed or complied with following the expiration or termination of this Contract, including, but not limited to, the obligations in the Confidentiality section, above, shall survive the expiration or termination of this Contract.

TAXPAYER TRANSPARENCY ACT

Pursuant to Neb. Rev. Stat. § 84-602.04, all state contracts including, at least in part, state funds, and that are in effect as of January 1, 2014, shall be posted on a public website. All non-proprietary and non-confidential information, as defined by law, will be posted for public viewing. Contractor hereby waives any copyrights for any material posted with this Contract, either as an attachment, schedule, or other subpart of this Contract, to the public website.

TIME IS OF THE ESSENCE

Time is of the essence in this Contract. The acceptance of late performance, with or without objection or reservation by NPSC, shall not waive any rights of NPSC nor constitute a waiver of the requirement of timely performance of any obligations on the part of Contractor remaining to be performed.

CONTRACTOR DUTIES

INDEPENDENT CONTRACTOR / OBLIGATIONS

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the Contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the Contract. The personnel the Contractor uses to fulfill the Contract shall have no contractual or other legal relationship with the NPSC; they shall not be considered employees of the NPSC and shall not be entitled to any compensation, rights or benefits from the NPSC, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal, if included, shall not be changed without the prior written approval of the NPSC. Replacement of these personnel, if approved by the NPSC, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Contractor to the Contract shall be employees of the Contractor or a subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the Contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the Contract;

SERVICE CONTRACT TERMS

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4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law; and
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees.
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the Contractor's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the Contract without the prior written authorization of the NPSC.

The NPSC reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this Contract.

The Contractor shall include a similar provision, for the protection of the NPSC, in the contract with any Subcontractor engaged to perform work on this Contract.

EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the 'United States Citizenship Attestation Form', available on the Department of Administrative Services website at <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf>
2. The completed 'United States Citizenship Attestation Form' should be submitted with either (A) the Request for Proposal response, if the Contract was bid through a Request for Proposal; or (B) At the time of signature of the Contract, if not bid.
3. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
4. The Contractor understands and agrees that lawful presence in the United States is required, and the Contractor may be disqualified, or the Contract terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 – 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for services to be covered by any subcontract resulting from this Contract.

COOPERATION WITH OTHER CONTRACTORS

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this Contract.

PERMITS, REGULATIONS, LAWS

The Contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the Contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the Contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this Contract.

OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

The NPSC shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the NPSC pursuant to this Contract.

The NPSC shall own and hold exclusive title to any deliverable developed as a result of this Contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

INSURANCE REQUIREMENTS

The Contractor shall throughout the term of the Contract maintain insurance as specified herein and provide the NPSC a current Certificate of Insurance/Accord Form (COI) verifying the coverage. The Contractor shall not commence work on the Contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the Contract, either:

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
2. Require each subcontractor to have equivalent insurance and provide written notice to the NPSC that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the NPSC with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the NPSC to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the Contract or within two (2) years of termination or expiration of the Contract, the Contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this Contract for the term of the Contract and two (2) years following termination or expiration of the Contract.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.

1. *Workers' Compensation Insurance*

The Contractor shall take out and maintain during the life of this Contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this Contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter. The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

2. *Commercial General Liability Insurance and Commercial Automobile Liability Insurance*

The Contractor shall take out and maintain during the life of this Contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by this Contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

SERVICE CONTRACT TERMS NEBRASKA PUBLIC SERVICE COMMISSION



The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. The policy shall include the State, and others as required by the Contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

REQUIRED INSURANCE COVERAGE	
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$5,000 any one person
Damage to Rented Premises (Fire)	\$100,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.	
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$1,000,000 per occurrence
COMMERCIAL CRIME	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
CYBER LIABILITY	
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties	\$2,000,000
MANDATORY COI SUBROGATION WAIVER LANGUAGE	

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



“Workers’ Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska.”

MANDATORY COI LIABILITY WAIVER LANGUAGE

“Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured.”

If the mandatory COI subrogation waiver language or mandatory COI liability waiver language on the COI states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy, a copy of the relevant sections of the policy must be submitted with the COI so the NPSC can review the limitations imposed by the insurance policy.

3. *Evidence Of Coverage*

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

Nebraska Public Service Commission
Attn: Thomas Golden – Executive Director
300 The Atrium 1200 N Street
Lincoln, NE 68508

These certificates or the cover sheet shall reference the Contract, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the NPSC is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

DEVIATIONS

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers’ Compensation, and the type of automobile coverage carried by the Contractor.

ANTITRUST

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

SERVICE CONTRACT TERMS

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CONFLICT OF INTEREST

Contractor certifies that there does not now exist a relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this Contract.

The Contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or an appearance of conflict of interest.

The Contractor certifies that it will not knowingly employ any individual known by Contractor to have a conflict of interest.

If the Contract was bid through a Request for Proposal, the Parties shall not knowingly, for a period of two years after execution of the Contract, recruit or employ any employee or agent of the other Party who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

STATE PROPERTY

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the Contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

SITE RULES AND REGULATIONS

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

ADVERTISING

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the NPSC. Any publicity releases pertaining to the project shall not be issued without prior written approval from the NPSC.

NEBRASKA TECHNOLOGY ACCESS STANDARDS

The State of Nebraska is committed to ensuring that all information and communication technology (ICT), developed, leased, or owned by the State of Nebraska, affords equivalent access to employees, program participants and members of the public with disabilities, as it affords to employees, program participants and members of the public who are not persons with disabilities.

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



By entering into this Contract, Contractor understands and agrees that if the Contractor is providing a product or service that contains ICT, as defined in the paragraph and such ICT is intended to be directly interacted with by the user or is public-facing, such ICT must provide equivalent access, or be modified during implementation to afford equivalent access, to employees, program participants, and members of the public who have and who do not have disabilities. The Contractor may comply with this section by complying with Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing standards adopted and promulgated by the U.S. Access Board.

ICT means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Contractor hereby agrees ICT includes computers and peripheral equipment, information kiosks and transaction machines, telecommunications equipment, customer premises equipment, multifunction office machines, software, applications, web sites, videos, and electronic documents. For the purposes of these assurances, ICT does not include ICT that is used exclusively by a contractor.

DISASTER RECOVERY/BACK UP PLAN

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the NPSC, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under the specifications in the Contract in the event of a disaster.

DRUG POLICY

Contractor certifies it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the NPSC.

DEBARMENT, SUSPENSION, OR DECLARED INELIGIBLE

Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state or federal department or agency.

SERVICE CONTRACT TERMS

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PAYMENT

PROHIBITION AGAINST ADVANCE PAYMENT

Payments shall not be made until contractual deliverable(s) are received and accepted by the NPSC (See Neb. Rev. Stat. § 81-2403).

TAXES

The State is not required to pay taxes and assumes no such liability as a result of this Contract. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

INVOICES

Invoices for payments must be submitted by the Contractor to the NPSC with sufficient detail to support payment. The Contractor shall submit a monthly invoice to the NPSC no later than the fifteenth (15th) day of the month following the reporting month. In the event the fifteenth falls on a weekend or holiday, the due date shall be the next business day. Invoices shall be transmitted electronically, in PDF format, to the contact person designated by the NPSC.

The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the NPSC, and no action by the NPSC, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the NPSC with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the NPSC as an amendment to the Contract.

INSPECTION AND APPROVAL

Final inspection and approval of all work required under the Contract shall be performed by the designated NPSC officials.

The NPSC and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the Contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

PAYMENT

NPSC will render payment to Contractor when the terms and conditions of the Contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the NPSC (See Neb. Rev. Stat. § 73-812(1)). Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt

SERVICE CONTRACT TERMS

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Payment Act (See Neb. Rev. Stat. §§ 81-2401–81-2408). The NPSC shall require the Contractor to receive payment by electronic means via Automated Clearing House (ACH) payment. In no event shall the NPSC be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the Contract, and the Contractor hereby waives any claim or cause of action for any such services.

LATE PAYMENT

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401–81-2408).

SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS

The NPSC's obligation to pay amounts due on the Contract for the fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the NPSC may terminate the Contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The NPSC will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the NPSC to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

RIGHT TO AUDIT

The NPSC shall have the right to audit the Contractor's performance of this Contract upon a 30 days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the Contract (Information) to enable the NPSC to audit the Contract. (Neb. Rev. Stat. § 84-304 et seq.). The NPSC may audit and the Contractor shall maintain, the Information during the term of the Contract and for a period of five (5) years after the completion of this Contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the NPSC at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The NPSC reserves the right to examine, make copies of, and take notes on any Information relevant to this Contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the NPSC. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the NPSC for the total costs of the audit. Overpayments and audit costs owed to the NPSC shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

SERVICE CONTRACT TERMS NEBRASKA PUBLIC SERVICE COMMISSION



FOREIGN ADVERSARY CONTRACTING PROHIBITION ACT CERTIFICATION

If this Contract involves the provision of technology to the NSPC, Contractor certifies that it is not a scrutinized company as defined under the Foreign Adversary Contracting Prohibition Act, Neb. Rev. Stat. § 73-903 (5); that it will not subcontract with any scrutinized company for any aspect of performance of the contemplated Contract; and that any products or services to be provided do not originate with a scrutinized company.

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



TERMS APPLICABLE TO FEDERALLY FUNDED CONTRACTS

The following terms are only applicable to this Contract if it involves federal funding:

CLEAN AIR ACT

If this Contract involves federal funds and the total value exceeds \$150,000, Contractor shall ensure that it is in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Federal Water Pollution Control Act as amended, 33 U.S.C. § 1251 et seq.

FEDERAL FINANCIAL ASSISTANCE

If this Contract involves federal funds, Contractor will comply with all applicable provisions of 45 C.F.R. §§ 87.1 and 87.2. Contractor shall not use direct federal financial assistance to engage in inherently religious activities, including, but not limited to worship, religious instruction, or proselytization.

FEDERAL PROVISIONS RELATED TO INTELLECTUAL PROPERTY

Any federal funding agency hereby reserves a royalty-free, non-exclusive, and irrevocable right, for federal or state government purposes, to reproduce, publish, or otherwise use, and to authorize others to use, the material produced in conjunction with the performance required under this Contract.

All software ownership rights shall be consistent with 45 CFR § 95.617, if applicable, and with all other applicable federal law; and

All patent rights under this Contract shall be as set forth in the clause contained in 37 C.F.R. § 401.14, and consistent with all other applicable federal law.

LOBBYING

As set forth in 45 CFR Part 93:

1. No federal appropriated funds shall be paid by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract or (a) the awarding of any federal agreement; (b) the making of any federal grant; (c) the entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, Contractor shall complete and submit Federal Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. If this Contract involves federal funds, and if the below is consistent with the terms of the applicable federal funding source of the Contract:

SERVICE CONTRACT TERMS

NEBRASKA PUBLIC SERVICE COMMISSION



4. No funds under this Contract shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself. (See Pub. L. 113-235, Division G, Title V, Sec. 503(a)).
5. No funds under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government. (See Pub. L. 113-235, Division G, Title V, Sec. 503(b)).

The prohibitions in the two preceding subsections shall include any activity to advocate or promote any proposed, pending or future federal, state or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including, but not limited to, the advocacy or promotion of gun control. (See Pub. L. 113-235, Division G, Title V, Sec. 503(c)).

WHISTLEBLOWER PROTECTIONS

The Contractor shall comply with the provisions of 41 U.S.C. § 4712, which states that an employee of a contractor, subcontractor, grantee, or subrecipient may not be discharged, demoted or otherwise discriminated against as a reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

The Contractor's employees are encouraged to report fraud, waste, and abuse. The Contractor shall inform their employees, in writing, that they are subject to federal whistleblower rights and remedies. This notification must be in the predominant native language of the workforce.

The Contractor shall include this requirement in any agreement made with a subcontractor.