

# PERSONAL SERVICE CONTRACT

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The parties to this contract are the State of North Dakota, acting through its North Dakota Insurance Department (STATE) and \_\_\_\_\_ (CONTRACTOR);

## 1. SCOPE OF SERVICE

CONTRACTOR, in exchange for the compensation paid under this contract, agrees to provide the following services:

CONTRACTOR agrees to provide the following services to STATE:

CONTRACTOR agrees to administer insurance producer licensing examinations, to prepare and revise the content of these examinations, to grade the examinations, to receive and process examination registration forms, and to report the results of each candidate's examination to STATE; and

a. CONTRACTOR agrees to develop, maintain, and validate examinations and to provide examination administration services for STATE for purposes of testing candidates for insurance producer licensing. STATE agrees that CONTRACTOR shall be the exclusive provider of these services for the term of this contract and that STATE shall not itself test candidates nor authorize any other individual, partnership, nonprofit corporation, corporation, institution, or other entity to develop or administer examinations during this period. STATE further agrees that CONTRACTOR shall be compensated in accordance with the terms of this contract and the schedule of fees set out in Appendix 1.

b. The examination services that CONTRACTOR will provide to STATE include developing and administering examinations and reporting the results of examinations for the following types of insurance licenses:

1. Life and Annuity (Part I – Product)
2. Life and Annuity (Part II – Laws and Regulations)
3. Accident and Health (Part I – Product)
4. Accident and Health (Part II – Laws and Regulations)
5. Life and Annuity, Accident and Health (Part II – Laws and Regulations)
6. Property (Part I – Product)

7. Casualty (Part I – Product)
8. Casualty (Part II – Laws and Regulations)
9. Property and Casualty (Part II – Laws and Regulations)
10. Consumer Credit (Product and Laws)
11. Crop Insurance (Product and Laws)
12. Bail Bonds (Product and Laws)
13. Legal Expense Insurance (Product and Laws)
14. Personal Lines (Product and Laws)

c. The examinations shall consist of objective, multiple-choice questions or problems (also referred to as “items”), and each examination shall be of a length and duration as determined by CONTRACTOR. All examination items developed or provided by CONTRACTOR shall be the property of CONTRACTOR and may be copyrighted in CONTRACTOR’S name. The content of the examinations shall be based upon the North Dakota examination content outlines, developed and periodically revised by CONTRACTOR and STATE. The outlines shall be approved by STATE prior to use in constructing examinations for distribution to candidates.

d. CONTRACTOR shall exercise its best efforts to monitor changes in the North Dakota Century Code, the North Dakota Administrative Code, and State policies to revise content outlines and to create and implement new examination items annually. The STATE agrees to inform CONTRACTOR, in writing, of any changes in the North Dakota Century Code, the North Dakota Administrative Code, or State policies regarding the licensing of insurance producers which may establish a need to revise the content outlines or examination questions.

e. The STATE may reject any examination question which contains subject matter that is not in compliance with the North Dakota Century Code, the North Dakota Administrative Code, or State policies.

f. CONTRACTOR shall develop, subject to STATE’S review and approval, a Licensing Information Bulletin containing examination content outlines (as approved by STATE), the process of applying for a license, registering for admission to an examination, rules regarding candidate conduct during the examination, sample examination questions, appropriate forms and applications. Bulletins shall be printed by CONTRACTOR and provided in sufficient quantities to be available, without charge, to all candidates upon request from CONTRACTOR, STATE, and any other locations as mutually agreed.

g. CONTRACTOR shall provide adequate security for examinations administered as well as for the bank of examination questions.

h. CONTRACTOR will, at the direction of STATE, establish an Examination Review Committee consisting of industry representatives in the State of North Dakota and STATE staff to review the scope of the subjects to be examined and examination items. The committee members shall be unsalaried; however, certain committee meeting expenses may be paid for by CONTRACTOR, subject to the specific advance agreement with the STATE as to their amount and nature. The Examination Review Committee shall meet annually to develop, review, discuss and evaluate examination items. The vendor shall coordinate the annual meeting of Examination Review Committee and pay all expenses of the meeting;

i. CONTRACTOR shall eliminate or revise items on a particular topic area as necessitated by changes in laws, standards, rules, or at the request of STATE.

j. CONTRACTOR shall monitor the difficulty level of the various items in order to produce examinations of comparable difficulty. CONTRACTOR shall calculate a difficulty index for each item for this purpose and shall be prepared to demonstrate that examinations are equivalent in degree of difficulty.

k. CONTRACTOR shall, at the request of STATE, review and rescore a candidate's examination to verify the validity of the examination results. CONTRACTOR shall perform the review at no cost to the STATE or the candidate.

Whenever used in this contract, the term:

1. "Candidate" shall mean an individual authorized to take an insurance producer examination pursuant to N.D.C.C. Title 26.1 and administrative rules adopted by the Commissioner.

2. "Examination" shall mean a series of questions designed to assess minimum competence for an insurance producer license.

3. "Examination Review Committee" shall mean that certain advisory committee established by STATE for the purpose of reviewing the examinations provided for by this Agreement.

4. "Item" shall mean an examination question.

5. "Test site" shall mean the location at which examinations are administered.

## **EXAM ADMINISTRATION**

a. CONTRACTOR shall select and establish, at its own expense, test sites in the Bismarck, North Dakota area and the Fargo, North Dakota/Moorhead, Minnesota area for administration of examinations a minimum of five days per week in each site or other mutually agreed upon schedule. North Dakota candidates will also be able to test at CONTRACTOR test sites located in other states. CONTRACTOR agrees that changes to the testing schedule may be made with the consent of the STATE to meet testing demand.

b. CONTRACTOR shall provide all services and materials necessary for test administration. CONTRACTOR shall equip and manage its examination sites, so that candidates are able to secure appointments and take examinations within a maximum of five business days of the request for such appointments. CONTRACTOR shall prepare for administration of the examinations, including providing adequate testing space for the expected number of candidates and arranging for testing facilities that are accessible to individuals with disabilities. Special provisions will be made, at no additional charge, for candidates with disabilities that prevent them from taking the examination on computer.

c. CONTRACTOR shall provide trained personnel (proctors) to operate the test sites. They will be trained and monitored to follow established procedures. CONTRACTOR shall provide training and information to ensure uniform, secure, and efficient test administration. CONTRACTOR shall provide its test site personnel with a detailed Proctor's Manual which will describe their responsibilities fully, as well as the administrative procedures and security measures required by CONTRACTOR in the administration of any examination. CONTRACTOR headquarters personnel shall maintain close contact with proctors. During regular business hours, every proctor will be able to call CONTRACTOR headquarters if a problem or irregularity in the administration of an examination occurs, thereby putting the proctor in direct contact with the appropriate individual. CONTRACTOR will evaluate any complaint by STATE concerning the performance of North Dakota test centers or test proctors and report findings to STATE within 10 days of notice of complaint.

d. The STATE shall have the right to visit test sites, provided proper STATE identification is presented to the test site personnel and provided such visits do not disrupt the business activities of the test site.

e. CONTRACTOR shall investigate all reports of testing irregularities and will notify STATE within 10 days of each report of testing irregularities which in the judgment of CONTRACTOR has a foundation in fact and which brings into question the validity of an individual's examination results. CONTRACTOR will also solicit feedback from proctors and examinees on the effectiveness of its administrative procedures in order to make its system of administration as security and efficient as possible.

f. CONTRACTOR shall score all examinations and provide STATE with candidate information and examination results in a manner and form acceptable (including paper or electronic media) to STATE within two working days of each examination date. Such information may include, but is not limited to, the name, address, and social security number of each candidate tested, the type(s) of examination(s) taken, and each candidate's exam results in terms of score and passing or failing status. CONTRACTOR will provide STATE with summary statistics regarding the number of candidates tested and percentages of pass/fail by type of examination. This data shall be provided to STATE at least quarterly. The statistics maintained on each type of examination and examination item will also be provided as requested.

g. Upon completion of their exam, candidates will be notified at the test site of their exam results, including a pass/fail indication, total score, and a score on each subsection of the test. Each candidate's printed score report will be mailed to the candidate within two working days of the examination.

h. CONTRACTOR, if requested to do so, will provide assistance to STATE in establishing an appropriate passing score for each exam. The STATE, however, remains responsible for setting the actual passing score used for exams.

#### **OWNERSHIP OF ITEMS, EXAMINATIONS, AND CANDIDATES' NAME AND ADDRESSES**

All examinations and items developed by CONTRACTOR under the provisions of this Agreement, including statistical data used in developing and scoring examinations, are and shall be the property of CONTRACTOR and may be copyrighted in CONTRACTOR'S name.

No examination or item developed by CONTRACTOR under the provisions of this Agreement shall be transmitted by STATE, by gift, loan, lease, sale, or otherwise to any individual or organization, public or private, for any purpose without the prior knowledge and written approval of CONTRACTOR.

CONTRACTOR shall not use the names and addresses of candidates for any purpose other than to perform its duties under this Agreement, without the written permission of STATE.

No later than October 14, 2009, CONTRACTOR shall submit to STATE a first draft of proposed examination questions for all types of insurance license types and a project progress report.

No later than November 9, 2009, STATE will provide to CONTRACTOR comments on and revisions to the proposed examination questions as needed.

No later than December 1, 2009, CONTRACTOR shall submit to STATE a revised draft of proposed examination questions based on the comments and suggested revisions of STATE. By this date, CONTRACTOR shall also provide a

project progress report to STATE and documentation showing that CONTRACTOR has secured the necessary test sites.

No later than December 17, 2009, STATE shall provide to CONTRACTOR additional comments for revisions to examination questions as needed.

No later than December 31, 2009, CONTRACTOR shall submit to STATE the final draft of examination questions.

### **USE OF OUTLINES**

The STATE reserves the right to use examination content outlines after the term of this Agreement without the benefit of future revisions by CONTRACTOR and without the right to associate the outlines with CONTRACTOR in any way.

## **2. TERM OF CONTRACT**

The term of this contract is for a period of 24 months, commencing on the 1st day of September, 2009, and terminating on the 31st day of August, 2011.

## **3. COMPENSATION**

In order to compensate CONTRACTOR for services provided under this contract, the parties agree that CONTRACTOR shall collect examination fees from insurance producer licensing candidates in accordance with the fee schedule set out in Appendix I. Appendix I is incorporated into this agreement.

a. CONTRACTOR shall collect its examination fees from a candidate when the candidate registers to take an examination.

b. CONTRACTOR's sole source of compensation for providing services to the STATE under this contract are the examination fees collected from candidates as set out in the fee schedule set out in Appendix I which is attached and incorporated into this contract by reference.

## **4. TERMINATION OF CONTRACT**

a. Termination without cause. This contract may be terminated for any reason by STATE upon 60 day's written notice to CONTRACTOR.

i. Termination for lack of funding or authority. STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

a. Termination for cause. STATE by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:

- i. If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or
- ii. If CONTRACTOR fails to perform any of the other provisions of this contract, or so fail to pursue the work as to endanger performance of this contract in accordance with its terms.
- iii. The rights and remedies of STATE provided in the above clause related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

## **5. FORCE MAJEURE**

CONTRACTOR will not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond CONTRACTOR'S reasonable control and CONTRACTOR gives notice to STATE immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

## **6. RENEWAL AND EXTENSION**

This contract will not automatically renew. STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least 30 days before the scheduled

expiration date. STATE reserves the right to execute up to two options to renew this contract annually under the same terms and conditions for a period of twelve months each.

STATE reserves the right to extend the contract period for an additional period of time, not to exceed six months, beyond the normal expiration date of the contract, upon mutual written agreement by both parties.

## **7. MERGER AND MODIFICATION**

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

## **8. SEVERABILITY**

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must 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.

## **9. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of STATE.

## **10. NOTICE**

All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

**(INSERT) NAME(S)**  
**ADDRESS**  
**CITY, STATE ZIP CODE**

North Dakota Insurance Department  
600 East Boulevard Avenue

State Capitol – Fifth Floor  
Bismarck, ND 58505

## **11. APPLICABLE LAW AND VENUE**

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

## **12. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

CONTRACTOR agrees to promptly notify STATE of all potential claims that arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

## **13. INDEMNITY**

STATE and CONTRACTOR each agree to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

## **14. INSURANCE**

CONTRACTOR shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- a. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- b. Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.
- c. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.

- d. Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- a. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of CONTRACTOR. The amount of any deductible or self retention is subject to approval by STATE.

- b. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or coverage. Less than an "A-" rating must be approved by STATE. The policies shall be in form and terms approved by STATE.

- c. The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without 30 days' prior written notice to the undersigned State representative.

- d. CONTRACTOR shall furnish a certificate of insurance to STATE prior to commencement of this agreement.

- e. Failure to provide insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.

## **15. ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due of any kind under this contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

## **16. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

## **17. CONFIDENTIALITY**

CONTRACTOR agrees not to use or disclose any information it receives from STATE under this contract that STATE has previously identified as confidential or exempt from

mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by STATE. STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

## **18. COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, except for disclosures prohibited in Section 17, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under Section 17 may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

## **19. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this contract, except to the extent specified in this contract.

## **20. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTORS agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

**21. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

**22. PREPAYMENT**

STATE will not make any advance payments before performance by CONTRACTOR under this contract.

**23. TAXPAYER ID**

CONTRACTOR'S federal employer ID number is: \_\_\_\_\_.

**24. PAYMENT OF TAXES BY STATE**

State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

**25. EFFECTIVENESS OF CONTRACT**

This contract is not effective until fully executed by both parties.

CONTRACTOR

STATE OF NORTH DAKOTA  
Acting through its Insurance Department

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_