

SAMPLE PERSONAL SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through the North Dakota Public Employees Retirement System (STATE) and [contractor's legal name] (CONTRACTOR);

1. SCOPE OF SERVICE

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

2. TERM OF CONTRACT

The term of this contract is for a period of _____ months, commencing on the ____ day of _____, 20____, and terminating on the ____ day of _____, 20____.

3. COMPENSATION

STATE will pay for the services provided by CONTRACTOR under this contract an amount not to exceed _____ per _____, to be paid _____.

4. TERMINATION OF CONTRACT

- a. Termination without cause. This contract may be terminated by mutual consent of both parties, or by either party upon 30-days written notice.
 - 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. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 - 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.

- b. 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

This contract will not automatically renew. STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

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:

Sparb Collins, Executive Director
ND Public Employees Retirement System
400 East Broadway, Suite 505
P.O. Box 1657
Bismarck, ND 58502-1657

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

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (STATE), from and against claims based on the vicarious liability of the STATE or its agents, but not against claims based on the STATE's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the STATE under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary. CONTRACTOR also agrees to defend, indemnify, and hold the STATE harmless for all costs, expenses and attorneys' fees incurred if the STATE prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

14. INSURANCE

- a. 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:

- i. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - ii. Automobile liability, including owned (if any), hired, and non-owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - iii. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
 - iv. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
 - v. 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.
- b. The insurance coverages listed above must meet the following additional requirements:
- i. Any deductible or self insured retention amount or other similar obligation under the policies is the sole responsibility of CONTRACTOR.
 - ii. 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 better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by state. The policies shall be in form and terms approved by state. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.
 - iii. The duty to indemnify State under this agreement must not be limited by the insurance required in this agreement.

- iv. The State of North Dakota and its agencies, officers, and employees (State) must be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. State must have all the rights and coverages as CONTRACTOR under the policies.
- v. The insurance required in this agreement, through a policy or endorsement, shall include:
 - (1) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against State;
 - (2) a provision that the policy and endorsements may not be canceled or modified without 30-days prior written notice to the undersigned State representative;
 - (3) a provision that any attorney who represents State under this policy must first qualify as, and be appointed by, the North Dakota Attorney General as a special assistant attorney general as required under N.D.C.C. § 54-12-08;
 - (4) a provision that CONTRACTOR's insurance coverage will be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the state and that any insurance, self-insurance or self-retention maintained by State must be in excess of CONTRACTOR's insurance and must not contribute with it;
 - (5) cross liability/severability of interest for all policies and endorsements;
 - (6) The legal defense provided to the STATE under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary;
 - (7) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.

- vi. The legal defense provided to State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary.
- vii. CONTRACTOR shall furnish a certificate of insurance, the additional insured endorsement adding the State of North Dakota as an additional insured, and, if requested, a copy of the insurance policy and all its endorsements, to the undersigned State representative prior to commencement of this contract.
- viii. 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. WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment or materials created or purchased under this contract belong to STATE and must be delivered to STATE at STATE'S request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to STATE all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable STATE to protect its rights under this section.

20. 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.

21. 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.

22. 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.

23. PREPAYMENT

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

24. TAXPAYER ID

CONTRACTOR'S federal employer ID number is: _____.

25. 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.

26. EFFECTIVENESS OF CONTRACT

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

CONTRACTOR

STATE OF NORTH DAKOTA
Acting through its

_____ (agency)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

