

PROFESSIONAL SERVICES CONTRACT

Contract #000000000000000000069082

This Contract ("Contract"), entered into by and between Indiana Department of Child Services (the "State" or "DCS") and EXPRESS LEGAL SERVICES INC (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor.

A. Background: The State and the Contractor represent that the State of Indiana Negotiated Bid #73218 Solicitation for Process Server Services ("Bid Solicitation") was issued by the Indiana Department of Administration ("IDOA") on behalf of the Department of Child Services, and the Contractor's response was in relation to that Bid Solicitation ("Contractor's Response"). The State and Contractor now agree that services set out in this Contract will be made available to the DCS upon the terms and conditions set out herein.

This Contract sets out the terms by which Contractor shall provide prompt, accurate, and timely process service of legal documents on behalf of DCS, as particularly described in the body of this Contract.

B. Definitions:

- (1) **Bid Solicitation** means the regional or other #73218 Solicitation for Process Server Services Bid Solicitation to which the Contractor responded which was issued by IDOA. The Bid Solicitation, all of its attachments, and any and all necessary supplemental Request(s) for Bid Solicitation(s) ("Supplemental Bid Solicitations") and attachments are incorporated by reference into this Contract. Should any information detailed in the Bid Solicitation conflict with the terms of this Contract, the requirements set forth in the Contract shall control.
- (2) **Contractor's Response** means the Contractor's response to the Bid Solicitation (which includes the Contractor's Response to any necessary Supplemental Bid Solicitations), as refined based on any subsequent Contractor agreement to services or rates (including any differential (if applicable)), which was submitted by the Contractor in accordance with the specifications of the Bid Solicitation. Contractor's Response is incorporated by reference into this Contract. Should any information detailed in Contractor's Response conflict with the terms of this Contract, the requirements set forth in the Contract shall control.
- (3) The term "**services**" as used in this Contract shall refer to the "services" and "process services" as further described below.

C. Services and Requirements: Contractor shall provide prompt, accurate, and timely process service of legal documents on behalf of DCS. Contractor shall provide such process service for requests received from DCS via regular mail, email, FedEx, or pick-up from a local DCS office. Contractor shall perform process services to addresses in all fifty (50) U.S. states, in addition to those in all ninety-two (92) Indiana counties. The Contractor shall accept requests for process service from any DCS local office, regardless of the Indiana county in which that DCS office is located.

The process services performed by Contractor must meet the following requirements:

- (1) Contractor must serve the requested documents only to the individual listed in the request received from DCS, unless DCS specifically authorizes, in writing, service by a method other than personal service upon the individual listed in a given request;

- (2) Comply with all Indiana state statutes and court rules regarding service of process, including Rule 4 of the Indiana Rules of Trial Procedure, as well as any other specific requirements communicated to the Contractor by DCS at the time of the request;
- (3) Attempt service of process within 48 hours of receiving a request from DCS.
- (4) Obtain successful service of process within fourteen (14) calendar days of receipt of the request from DCS;
- (5) Make a minimum of four (4) attempts at service of process. At least one (1) attempt must be made during each of the following time frames:
 - (a) 6:00 am – 11:59 am;
 - (b) 12:00 pm – 5:59 pm; and
 - (c) 6:00 pm – 10:00 pm.

In addition, there must be 24 to 48 hours between each attempt.

- (6) If a different service address is identified for an individual to be served, the Contractor shall promptly notify the DCS personnel requesting the service to seek approval to serve the individual at the different service address; if the DCS personnel has approved, the requirements set forth in subsubsection (5) above shall reset,
- (7) Contractor's proof of service return shall contain, at a minimum:
 - (a) record of all times and dates attempted and whether the attempt was successful;
 - (b) details on the service (who was served, location, time and date, and names of persons spoken to);
 - (c) photos of residences where documents were posed/positioned;
 - (d) printed name and signature of the process server; and
 - (e) if service is not successful, specifically note the reason for non-service with details of the location(s) where service was attempted, including the date and time of the attempts.
- (8) Complete and email affidavits/proof of services return to the requestor within 24 hours of completion of successful service or final unsuccessful attempt;
- (9) The proof of service return shall contain, at a minimum:
 - (a) Record of times and dates attempted and whether the attempt was successful;
 - (b) Details on the service (who was served, location, time and date, and names of persons spoken to); and
 - (c) If service is not successful, specifically note the reason for non-service with details of the location(s) where service was attempted, including the date and time of the attempts.
- (10) Provide any additional documentation that DCS may request regarding the service of process, including but not limited to justification for service at additional addresses pursuant to subsubsection 1.C.(6) above;
- (11) Provide the proof of service return to the DCS local office by either email or regular mail. The Contractor shall provide a final status affidavit to the respective DCS local office's inbox;
- (12) Assume all liability for any accidental or criminal occurrence.
- (13) Effectuate process service in the manner requested by the DCS or using agency, as defined below;
- (14) Personally serve inmates and obtain signatures on documents if the facility permits such service.
- (15) Provide a written monthly status report of requested process service jobs to each DCS office. This report must contain the following for each process service request:
 - (a) job number assigned to the service request;
 - (b) associated case/cause number;
 - (c) party involved;
 - (d) address;
 - (e) cost;
 - (f) requestor name; and
 - (g) an indication regarding whether the process service was successful or unsuccessful.
- (16) Provide copy service as part of the included cost of each process service request;

(17) Skip tracing. If the Contractor becomes aware (through notification or otherwise), that an individual's address is invalid, the Contractor shall promptly notify the DCS personnel requesting the service to seek approval to undertake skip-tracing activities as listed below. If the DCS personnel has granted approval, the required skip-tracing actions described below must be completed prior to invoice claim filing. The Contractor shall attempt to locate the person to be served through the following skip-tracing strategies:

- (a) Attempting service at the referred person's last known physical address.
- (b) Calling the referred person's telephone (cellular and landline(s)) number provided by DCS.
- (c) Calling directory assistance and calling the telephone number(s) identified.
- (d) Calling the referred person's place of employment, when known.
If a place of employment has informed the Contractor that they will not validate information or that the referred person is no longer employed there, then the Contractor is no longer required to call the place of employment.
- (e) Confirm the mailing address and check for a forwarding address through the United States Postal Service.
- (f) Attempt contact through the referred person's email address.
- (g) Attempt to locate the referred person through social medial sites and profiles.

(18) The Contractor shall provide process services through substituted service when the Contractor's process server is unable to serve the referred person directly after attempting all the skip tracing strategies set out in subsubsection 1.C.(17) above. Such substituted service shall include the Contractor's process server: 1) delivering the documents to an adult who currently resides at the referred person's home; 2) speaking with the person served to ensure they are a current co-resident of the person referred by the DCS for process service; 3) mailing a copy of the papers to the referred person's home address; and 4) providing the individual from DCS referring the process services with written notice of the substitute service occurring, name of co-resident served, and address where the co-resident received service.

(19) Invoice DCS monthly by DCS Region, as defined by the DCS, and such invoices must include a detailed description of each DCS Region's monthly spend with each process service request identified;

(20) Respondents Orders and Documents: Certain Indiana Courts ("Court(s)") are currently requiring respondent(s) in DCS' cases ("Respondent(s)") to be personally served with court orders and other documents after the initial service of process on the Respondent(s) ("Orders and Documents"). Contractor shall personally serve the Orders and Documents on the Respondent(s) as ordered by the Court. When serving the Orders and Documents on Respondents, Contractor shall also meet the requirements in subsubsections 1(C)(1) through (18) of the Contract. If there is any conflict between the Court's order and subsubsections 1(C)(1) through (18) of the Contract, the Court's order shall control. Contractor shall serve the Orders and Documents in all 92 Indiana counties. Contractor shall personally serve all unserved Orders and Documents in its possession pertaining to a Respondent at the same time. In addition, Contractor shall attempt to obtain the signature of the person being served if requested by the DCS.

(21) Contractor's process servers, including, but not limited to, Contractor's staff and subcontracted servers, shall appear in legal proceedings, including, but not limited to, court hearings, trials, and depositions (hereinafter "Appearance(s)"), to provide testimony if DCS requests such Appearance(s).

(22) Provide training on process service or provider related issues as requested by DCS.

D. Other Governmental Bodies (in the singular, "Using Agency"): The Contractor shall provide the services detailed in Section 1 [Duties of Contractor] of this Contract to other governmental bodies (hereinafter "Using Agency") at the rates described in Section 2 [Consideration] of the Contract. When a request for service(s) is received from a Using Agency by the Contractor, the Using Agency will provide all necessary documentation needed to allow the Contractor to

promptly, accurately, and timely effectuate the process service. In addition, the Using Agency will provide the Contractor with the correct billing address and the person to whom the invoice shall be submitted to help facilitate the preparation of the invoice by the Contractor. The Using Agency shall be invoiced directly by the Contractor for any services performed under this Contract. The Contractor **shall not** invoice DCS for any services that were requested by a Using Agency. A Using Agency's nonpayment for Contractor's rendered services shall not be deemed a breach of this Contract.

2. Consideration. The consideration for this Contract is **zero-based**. The Contractor will be paid for its delivery of services as provided in this Contract (including any exhibits attached hereto), the Bid Solicitation, and the Contractor's Response, and paid in accordance with specifications and duties outlined above in Section 1 [Duties of Contractor] of the Contract, based on the specified rate per unit of service and the specified amount for completion of a defined unit of service, subject to the terms and conditions of this Section and all other applicable provisions of this Contract, including Section 37 [Payments] of this Contract. Therefore, the State allocates funding to compensate the Contractor for completion of services described in this Section, as follows:

A. For all counties in Indiana, the Contractor will be paid at a rate of fifty dollars and no cents (**\$50.00**) per service address where service of process is performed.

B. Service to addresses in Metropolitan Statistical Areas adjacent to Indiana, including service to addresses in the following areas adjacent to Indiana, shall be billed according to a rate of one hundred ten dollars and no cents (**\$110.00**) per service address. Such Metropolitan Statistical Areas adjacent to Indiana include:

- (1) The "Chicago-Naperville-Elgin, IL-IN-WI" Metropolitan Statistical Area ("MSA"), as delineated by the Office of Management and Budget ("OMB"), except the portions thereof which are located in Indiana;
- (2) The "Cincinnati, OH-KY-IN" MSA, as delineated by OMB, except the portions thereof which are located in Indiana;
- (3) The "Louisville/Jefferson County, KY-IN" MSA, as delineated by OMB, except the portions thereof which are located in Indiana; and
- (4) The "Owensboro, KY" MSA, as delineated by OMB.

C. The rate per service address for all addresses in the U.S. not identified above, shall be one hundred fifty dollars and no cents (**\$150.00**).

D. **Respondents Orders and Documents:** Contractor will be paid \$50.00 each time it personally serves Orders and Documents on a Respondent residing within the State of Indiana, \$110.00 each time it personally serves Orders and Documents on a Respondent at a service address appearing in subsubsection 2.B.(1)–(4) above, and \$150.00 each time it personally serves Orders and Documents on a Respondent residing at an address not identified in subsections 2.A. or 2.B. above. (As stated in Section 1 above, all unserved Orders and Documents pertaining to a particular Respondent must be served concurrently.)

E. Contractor will be paid \$25.00 for each skip tracing request that is completed in accordance with subsubsection 1.C.(17) of this Contract.

F. Payment to the Contractor as provided in subsections A through E of this Section will be subject to the following conditions:

- (1) Timely completion and submission to the State of the information required for any requisite reports necessary to monitor services or programs and outcomes, as required in Section 1 of the Contract.
- (2) Timely completion and submission to the DCS of monthly (or more frequently) written reports relating to referred to the Contractor for services or relating to other issues pertinent to this Contract, as required by Section 39 [Progress Reports] or other Section of this Contract.
- (3) Satisfactory completion and submission to the State of any applicable work product or other deliverable, as specified in the Bid Solicitation, the Contractor's Response, or in this Contract itself, for services involved with this Contract.
- (4) Timely resolution of any issues related to Department of Revenue ("DOR") or Department of Workforce Development ("DWD"). The Contractor acknowledges that this Contract cannot proceed while any DOR or DWD "holds" exist.
- (5) If applicable, the Contractor must bill any available payment source, including, but not limited to, Medicaid, Medicare, and/or private insurance, prior to submitting a properly prepared invoice/claim to DCS.
- (6) Contractor providing and DCS receiving a completed proof of service return.

G. If service of process is accomplished later than fourteen (14) calendar days of the date of request for service; payment for such service may be denied unless DCS consents in writing to an extension of time in which to perform service.

H. Using Agency Consideration Provisions:

- (1) The consideration for the Using Agency shall be zero-based. Each respective Using Agency will pay the Contractor for its delivery of services as provided in this Contract and will be paid in accordance with Section 2 [Consideration] of the Contract, based on the specified rate per service address and the out-of-state process service rates for completion of the defined unit of services, subject to the terms and conditions of Section 2 [Consideration] and all other applicable provisions of the Contract, including, but not limited to, Section 37 [Payments] of the Contract. DCS shall not be responsible for any payment for costs resulting from a Using Agency request for service(s).
- (2) Contractor shall submit a properly prepared invoice of charges directly to the Using Agency for services performed for the Using Agency's review. The invoice shall include detailed information including the name of person served, county or state served in, and the rate per service address. Payment of the invoice, if accurate, shall be made exclusively by the respective Using Agency thirty-five (35) calendar days from receipt in accordance with IC 5-17-5-1 et seq. The Contractor **shall not** submit to DCS any invoice for services performed at the request of a Using Agency. A Using Agency's nonpayment for Contractor's rendered services shall not be deemed a breach of this Contract.
- (3) The Using Agency will in good faith perform its obligations hereunder, and shall not pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-54-8-1 et seq., and IC 34-13-1-1 et seq. All Using Agency payment obligations are subject to the encumbrance of monies and shall be made in arrears in accordance with Indiana law and State fiscal policies and procedures.
- (4) The fees in subsubsections 2.J. and 2.K. below may also apply to Using Agencies.

I. Contractor shall provide training on process service or provider related issues as requested by DCS at no cost.

J. Contractor may invoice the DCS for legal Appearance(s) according to the following:

- (1) A fee of \$30.00 per hour for in-person Appearance(s), and this fee shall not include time spent traveling to or from the appearance; and
- (2) a \$15.00 flat fee for virtual (i.e. Zoom) Appearance(s).

K. The Contractor may invoice the DCS and Using Agencies an additional rush fee of \$30.00 for process service requested and completed within 48 hours for an urgent court date occurring within the 48 hours.

3. Term. This Contract shall be effective for a period of two (2) years. It shall commence on April 01, 2023 and shall remain in effect through March 31, 2025.

4. Access to Records. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors; and Subcontracting - Modified

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one (1) party.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

C. The Contractor shall monitor the performance of all subcontractors and shall remain responsible to the State for the performance of any subcontractor. The Contractor agrees to enter into written agreements with all subcontractors and to provide copies of all subcontracting agreements to the State upon request. It shall be the responsibility of the Contractor to ensure all subcontractors have the required background checks completed as set forth in Section 53 [Criminal and Background Checks] below. The Contractor further agrees to notify the State of a breach of these provisions by a subcontractor and to discontinue any agreement with the specified subcontractor in the event of such a breach.

6. Assignment of Antitrust Claims. As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

7. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.331 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

8. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

9. Changes in Work. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws – Modified.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including any disaster plan protocol (Title IV-E and Title IV-B), and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.*, and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC § 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. Before this Contract may be moved through the State signature process, it must pass review by the Department of Workforce Development ("DWD") and the Department of Revenue ("DOR"). The Contractor acknowledges that this Contract cannot proceed while any DOR or DWD "holds" exist. Thus, if the Contractor has unpaid unemployment insurance or unpaid taxes to the State, this Contract will be held until these issues are resolved.

D. The Contractor certifies by entering into this Contract that neither it nor its principal(s) are presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

E. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract. In the event of DCS' receipt of a report (verbal or written) of criminal or potentially criminal activity by a member of the Contractor's staff (including any of the Contractor's subcontractors and their staff) that potentially threatens/endangers the life, health, or safety of any of DCS' wards, DCS may immediately require a temporary suspension of

such member of the Contractor's staff (including any of the Contractor's subcontractors and their staff) pending an investigation into the report.

F. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration ("IDOA") following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this Section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

H. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

I. As required by IC § 5-22-3-7:

- (1) The Contractor and any principals of the Contractor certify that:
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC § 24-4.7 [Telephone Solicitation of Consumers];
 - (ii) IC § 24-5-12 [Telephone Solicitations]; or
 - (iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.
- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.

11. Condition of Payment – Modified. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned DCS Deputy Director of Child Welfare Services and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations, as well as in accordance with all applicable DCS Service Standards and all other specifications set forth above in Section 1 [Duties of Contractor] and in the other provisions of this Contract. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract (including, but not limited to, any applicable accreditation and/or service standards and all specifications set forth above in Section 1 [Duties of Contractor]), or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information – Modified.

A. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor, including, but not limited to, services recipient information received by the

Contractor or its subcontractors in administering the terms and provisions of this Contract, may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

B. The parties acknowledge that the services to be performed by the Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this Section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by the Contractor, the Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

13. Continuity of Services – Modified.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration and/or termination, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

- (1) Furnish phase-in training, and
- (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

- (1) Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires and/or is terminated, and
- (2) Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration and/or termination that result from phase-in, phase-out operations).

14. Debarment and Suspension – Modified.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical

influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract, including a review of information included at <http://www.oig.hhs.gov/> and <https://www.sam.gov/portal/public/SAM/> (and any designated successor websites), and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

16. Disputes.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

17. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Eligibility Verification. As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor

is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

20. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation. As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

23. HIPAA Compliance. If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

24. Indemnification. The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor.

25. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be

construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and Contractor shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

26. Indiana Veteran Owned Small Business Enterprise Compliance. Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's Division of Supplier Diversity and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: NONE

IVOSB	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
NONE				

Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to IndianaVeteransPreference@idoa.IN.gov, or mailed to IDOA, 402 W. Washington Street, Room W-462, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to IndianaVeteransPreference@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Contractor may also be required to report IVOSB certified subcontractor payments directly to the Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

27. Information Technology Enterprise Architecture Requirements. If this Contract involves information technology-related products or services, the Contractor agrees that all such products or services are compatible with any of the technology standards found at <https://www.in.gov/iot/2394.htm> that are applicable, including the assistive technology standard. The State may terminate this Contract for default if the terms of this paragraph are breached.

28. Insurance – Modified.

A. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for

any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

- (1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
- (2) Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
- (3) Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.
- (4) Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.
- (5) Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.
- (6) Surety or Fidelity Bond(s) if required by statute or by the agency.
- (7) Cyber Liability coverage addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$1,000,000 in the aggregate.

The Contractor shall provide proof of such insurance coverage by tendering to the State representative listed in Section 34.A.(1) [Notice to Parties] a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the state of Indiana is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

- (1) The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
- (2) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
- (3) The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
- (4) The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
- (5) The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State representative listed in Section 34.A.(1) [Notice to Parties] before commencement of this Contract.

29. Key Person(s).

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are N/A.

30. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

31. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

32. Minority and Women's Business Enterprises Compliance.

Award of this Contract was based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan as detailed in the Minority and Women's Business Enterprises Subcontractor Commitment Form, commonly referred to as "Attachment A" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by Division of Supplier Diversity and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following Division of Supplier Diversity certified MBE and/or WBE subcontractors will be participating in this Contract: **NONE**

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
	<u>NONE</u>			

Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to MWBECompliance@idoa.IN.gov, or mailed to Division of Supplier Diversity, 402 W. Washington Street, Room W-462, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to

MWBECompliance@doa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division of Supplier Diversity certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/doa/mwbe/payaudit.htm. The Contractor may also be required to report Division of Supplier Diversity certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

33. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, the Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

34. Notice to Parties – Modified.

A. Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

(1) Notices to the State shall be sent to:

Deputy Director of Legal Operations
Indiana Department of Child Services
302 W. Washington Street, Room E306, MS 47
Indianapolis, IN 46204
E-mail: kimberly.knightingale@dcs.in.gov (or designated successor's email)

(2) Notices to the Contractor shall be sent to:

Christine Trehan
CEO
102 Granby Dr., Ste. 103
Indianapolis, IN 46229
christine@expressls.com

B. Notice of any change in the person or address to whom notices should be sent and/or emailed, as specified in paragraph A of this Section, shall be given to the other party in the manner provided in paragraph A of this Section.

C. As required by IC § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

35. Order of Precedence; Incorporation by Reference – Modified. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) #73218 Solicitation for Process Server Services Bid Solicitation, (4) Contractor's response to the Bid Solicitation, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

36. Ownership of Documents and Materials – Modified.

A. All documents, records, data, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

37. Payments.

A. All payments shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

38. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

39. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

40. Public Record. The Contractor acknowledges that the State will not treat this Contract as containing confidential information and the State will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

41. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

42. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

43. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

44. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

45. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

46. Termination for Default. -- Modified.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

- (1) Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
- (2) Deliver the supplies or perform the services within the time specified in this Contract or any extension;
- (3) Make progress so as to endanger performance of this Contract; or
- (4) Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

47. Travel. No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the *Indiana Department of Administration Travel Policy and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Travel Policy* guidelines.

48. Waiver of Rights – Modified. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract. No waiver by the State of any breach of any provision of this Contract shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof.

49. Work Standards – Modified. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards applicable to the services it provides pursuant to this Contract. The Contractor is responsible for ensuring that its employees, agents, and any subcontractors conform to the professional and technical guidelines and standards applicable to all services and programs that the Contractor provides under this Contract. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract and/or those individuals assigned to provide any of the services pursuant to this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. Conflict of Interest – Added.

A. Paragraphs B through E of this Section apply if the Contractor is an individual, a corporation that issues stock to individuals representing ownership shares of the corporation, a partnership, a limited liability company, or any other form of business organization or association the members or owners of which could receive a personal financial benefit or increase in personal net worth attributable to income or profits received by the organization (exclusive of compensation in the form of salary or wages paid for services rendered to the organization). This Section, other than Paragraph F, does not apply if the Contractor is a nonprofit corporation, a school or university that is not organized or operated for the financial benefit or profit of individual owners, or an agency of a political subdivision or other governmental organization.

B. As used in this Section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

- (1) The individual executing this Contract;
- (2) An individual who has an interest of three percent (3%) or more of the Contractor, if the Contractor is not an individual; or
- (3) Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

C. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of the state of Indiana.

D. The Department will not exercise its right of cancellation under paragraph C above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the state of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of state of Indiana employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this Section.

E. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the state of Indiana. The obligation under this Section extends only to those facts which the Contractor knows or reasonably could know.

F. The Contractor acknowledges and agrees that no employee, agent, representative, or subcontractor of the Contractor who may be in a position to participate in the decision-making process of the Contractor or its subcontractors may derive an inappropriate personal or financial interest or benefit from any activity funded through this Contract, either for himself or herself or for those with whom he or she has family or business ties.

51. Fees – Added. The Contractor and its subcontractors shall impose no fees upon the recipients of any services provided through this Contract except as explicitly authorized by the State.

52. Environmental Tobacco Smoke – Added. The Contractor agrees to comply with all provisions of 20 U.S.C. § 6081 *et seq.*, and any regulations promulgated thereunder. In particular, the Contractor agrees that it will require that smoking be prohibited in any portion of an indoor facility, other than a private residence, regularly used for the provision of services to children under the age of eighteen (18), and that it will comply with all applicable requirements of the statute and regulations. The Contractor further agrees that it will require the language of this condition to be included in any subcontracts which contain provisions for services to children.

53. Criminal and Background Checks – Added. To ensure Contractor remains in compliance with the Contract, the Contractor shall be responsible for modifying its practices to comply with all applicable federal laws, state of Indiana laws, administrative letters, and DCS policies 13.3 and 13.4, which includes, but are not limited to the following:

A. This Section applies to all directors/chief executive officers, facility managers, licensing applicants and other heads of agencies, by whatever title, and each employee or volunteer (including interns) of the Contractor or any subcontractor or subcontractor's employee who

performs any service or activity pursuant to this Contract ("Covered Personnel"). The Contractor (referred to in this Section as Provider) shall be responsible for performing and ensuring Covered Personnel undergo all checks of local criminal records and backgrounds required by law, this Contract, Administrative Letter, and applicable DCS policies found at <https://www.in.gov/dcs/2354.htm> (or successor website) ("Required Checks"). Any person who might serve as a substitute for a Covered Personnel position, even in emergency circumstances, shall undergo the Required Checks for that position. All Required Checks must be completed and all outstanding issues resolved *prior* to the Covered Personnel commencing contractual duties. The Provider has an ongoing obligation to conduct Required Checks for employees, volunteers, interns, subcontractors, and subcontractor's employees who join the Provider or subcontractor(s) after this Contract begins. Such persons may not provide any services that involve children or their records before the requisite checks have been completed and all outstanding issues resolved.

- (1) This Section shall not apply to subcontractors hired by Contractor not more than two (2) times in any thirty (30) day period or more than five (5) times in any calendar year to provide service *pro re nata* to individual addresses located outside of Indiana and the adjacent areas identified in Section 2(A)(3), if the subcontractor:
 - (a) is a member of the National Association of Professional Process Servers ("NAPPS");
 - (b) is a member of a state association of professional process servers chartered by NAPPS and whose members must conform to the NAPPS code of ethics and policy manual;
 - (c) is a qualified law enforcement officer as defined in 18 U.S.C. § 926B;
 - (d) is an individually bonded and/or licensed process server in the state in which they are being subcontracted to provide service; or
 - (e) is a person commonly employed as a professional process server, has undergone background checks equivalent to those required for Contractor's employees pursuant to the Criminal and Background Checks section of the Contract, and provides documentation of those checks to the Contractor.
- (2) The Required Checks will be conducted in the same manner as required in accordance with IC § 31-27-3-3, subsections (e)(1) and (f) for licensed residential child caring institutions, with respect to IC § 31-27-3-4, subsections (e)(1) and (f) for group homes. As applicable laws and DCS' policies and practices are updated periodically, the Provider shall comply with the most current laws and DCS' policies. Upon written request, DCS will furnish the Provider with information on updates and any changes in policy or procedure.
- (3) The Provider shall maintain records of information it gathers and receives on Covered Personnel checked pursuant to this Section, and such records shall be provided to the DCS or be made available for inspection by authorized representatives of the DCS upon request.
- (4) At the time the Contractor submits this Contract for signature, and annually upon the anniversary of the effective date of this Contract, the Provider shall collect, verify, and make available to the DCS all documentation demonstrating the Required Checks of Covered Personnel have been completed and are compliant with the then-existing law and DCS policy. The Provider shall furnish any documentation related to these Required Checks as DCS requests.

- (5) In order to allow DCS to evaluate the results and to make determinations regarding qualifications, national fingerprint-based criminal history checks relating to Covered Personnel are required to be conducted through DCS' approved fingerprint vendor in accordance with the terms and conditions stated in IC §§ 10-13-3-38.5 and 39. The results of the national fingerprint-based criminal history checks will be returned to DCS as an authorized entity to receive the results. DCS will inform the Provider whether the report it receives concerning the subject of a check shows any record that would be grounds for denial of his/her ability to provide services and/or perform activities pursuant to this Contract. If any Covered Personnel receive a response of conditionally disqualified or disqualified, further follow up is required. If the result is disqualified, then the individual may be eligible for a waiver. The Provider should contact the DCS' background check unit to determine if the individual is eligible and to apply for the waiver. DCS will not release to the Provider any criminal history record information ("CHRI") contained in any report that it receives from the Federal Bureau of Investigation ("FBI") through the Indiana State Police ("ISP"). If the Provider requests a waiver of criminal history, DCS will inform the Provider of the decision on the waiver request.
- (6) In the event a criminal history or background check required herein produces any record concerning the subject of a check that would be a ground for denial of his or her ability to provide services and/or perform activities pursuant to this Contract and the Provider chooses to retain such employee or volunteer, that decision may be considered a material breach of this Contract.
- (7) The Provider will be responsible for payment of all fees required to be paid for conducting any check required under this Section, whether the check is conducted by the Provider or by DCS. Any fees paid by DCS on behalf of the Provider may be offset against any claim for payment submitted by the Provider under this Contract.

54. Survival – Added. All terms of this Contract which, by their nature, are intended to survive termination, in whole or in part, and/or expiration of this Contract will survive termination, in whole or in part, and/or expiration of this Contract, including, but not limited to, the following Sections: Section 4. Access to Records; Section 6. Assignment of Antitrust Claims; Section 7. Audits; Section 12. Confidentiality of State Information; Section 13. Continuity of Services; Section 16. Disputes; Section 19. Employment Option; Section 22. Governing Law; Section 23. HIPAA Compliance; Section 24. Indemnification; Section 36. Ownership of Documents and Materials; Section 37. Payments; Section 38. Penalties/Interest/Attorney's Fees; Section 40. Public Record; Section 45. Termination for Convenience; Section 46. Termination for Default; Section 47. Travel; Section 48. Waiver of Rights; and Section 53. Criminal and Background Checks. The above list of Sections surviving the termination and/or expiration of this Contract is not exhaustive and there are other provisions of this Contract which shall survive the termination, in whole or in part, and/or expiration of this Contract.

55. State Boilerplate Affirmation Clause. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in 2022 SCM Template) in any way except as follows:

- 5 Assignment; Successors; and Subcontracting – modified;
- 10 Compliance with Laws – modified;
- 11 Condition of Payment – modified;
- 12 Confidentiality of State Information – modified;
- 13 Continuity of Services – modified;
- 14 Debarment and Suspension – modified;

28 Insurance – modified;
34 Notice to Parties – modified;
35 Order of Precedence; Incorporation by Reference – modified;
36 Ownership of Documents and Materials – modified;
46 Termination for Default – modified;
48 Waiver of Rights – modified;
49 Work Standards – modified;
50 Conflict of Interest – added;
51 Fees – added;
52 Environmental Tobacco Smoke – added;
53 Criminal and Background Checks – added; and
54 Survival – added.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: <https://secure.in.gov/apps/idoa/contractsearch/>

In Witness Whereof, the Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

EXPRESS LEGAL SERVICES INC

By: *Christine Trulian*
577B7986E028488...

Title: CEO

Date: 3/20/2023 | 10:35 PDT

Indiana Department of Child Services

By: *Aaron Nicholas Atwell - OOSOZ*
8A6BCB244857475...

Title: CFO

Date: 3/20/2023 | 13:46 EDT

Electronically Approved by: Department of Administration By: Rebecca Holw erda, Commissioner	(for)	
Electronically Approved by: State Budget Agency By: Zachary Q. Jackson, Director	(for)	Electronically Approved as to Form and Legality by: Office of the Attorney General By: Theodore E Rokita, Attorney General