

# **SAMPLE PERSONAL SERVICE CONTRACT**

---

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

## **SCOPE OF SERVICE**

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

[State what is to be done under the contract. This may be a brief statement, or may require an attachment setting out the scope of services in great detail.]

## **TERM OF CONTRACT**

The term of this contract is for [#] months, beginning on [Month, Day], 20[Year], and ending on [Month, Day], 20[Year].

## **COMPENSATION**

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

## **TERMINATION OF CONTRACT**

- a. Termination without cause. This contract may be terminated by mutual consent of both parties.
- b. Termination for lack of funding or authority. STATE by written notice of default to CONTRACTOR, may terminate the whole or any part of this contract, under any of the following conditions:
  - (1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
  - (2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
  - (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

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

- c. Termination for cause. STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- (1) If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or
- (2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

### **FORCE MAJEURE**

CONTRACTOR shall not be held responsible for delay or default caused by fire, flood, 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.

### **RENEWAL**

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

### **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.

### **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 is unaffected, 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.

### **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 does not have authority to contract for or incur obligations on behalf of STATE.

**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:

\_\_\_\_\_  
\_\_\_\_\_

or

\_\_\_\_\_  
\_\_\_\_\_

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

**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 adjudicated exclusively in the State District Court of Burleigh County, North Dakota.

**SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

CONTRACTOR shall 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.

**INDEMNITY**

[Please see the contract drafting manual or the risk management manual to choose the best indemnity provision for your contract.]

**INSURANCE**

[Please see the contract drafting manual or the risk management manual to choose the best insurance provision for your contract.]

**ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due 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.

**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.

## **CONFIDENTIALITY**

CONTRACTOR shall not 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 shall not 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.

## **COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, except for disclosures prohibited in this contract, 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 this contract, 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.

## **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.

## **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 Workforce Safety and Insurance 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.

## **NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR 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.

**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 shall maintain all such records for at least three years following completion of this contract.

**PREPAYMENT**

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

**TAXPAYER ID**

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

**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.

**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: \_\_\_\_\_