

CONTRACT BETWEEN THE NEBRASKA DEPARTMENT OF ADMINISTRATIVE SERVICES, RISK MANAGEMENT AND F A RICHARD & ASSOCIATES, INC.

This contract is entered into by and between the Nebraska Department of Administrative Services, Risk Management (hereinafter “the State”), and F A Richard & Associates, Inc. (hereinafter “FARA”).

PURPOSE. The purpose of this contract is to provide Third Party Administrator (TPA) Services to the State of Nebraska’s self-insured workers’ compensation program for a period effective July 1, 2015 to June 30, 2016.

COST OF CONTRACT. Workers’ Compensation Claims Administration Services for an annual cost of \$1,534,896.00. Invoices will be paid equal quarterly payments.

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All information not specifically excluded by State Law WILL BE POSTED FOR PUBLIC VIEWING.

I. SCOPE OF WORK

A. The FARA shall do the following:

a. General.

- i. The TPA shall provide an adequate number of professionally trained claim staff to assure excellence in all areas of services requested in this contract. The TPA must provide a copy of its organizational chart with detailed descriptions of the staff titles for each position and the skills required to fill those positions. The State retains the right to review the organizational chart and positions contained within the submitted organizational chart may not be changed without the State’s written knowledge. Individuals hired to fill the positions must be at the stated level of skill and experience and the State shall review such.
- ii. TPA’s administrative office shall be open for business Monday through Friday from 8:00 AM to 5:00 PM Central Standard Time each week of the year excluding legal holidays recognized by the State of Nebraska or closure due to causes beyond the reasonable control of the TPA.
- iii. The TPA shall provide a toll-free telephone number for communication with Risk Management and agencies.
- iv. The TPA shall provide claim forms and other forms required for the efficient operation of the workers’ compensation programs.
- v. The TPA shall develop and assist in implementing safety and risk control policies for the State and its agencies as approved by the Risk Manager.
- vi. As needed, the TPA shall conduct visits to state facilities to aid in analyzing and providing solutions to actual or potential issues and problems.

- vii. The TPA shall work with Risk Management and agencies in complying with state statutes, rules and regulations and risk management policies.
- viii. The TPA shall coordinate service strategies with the Risk Manager. This will include developing scheduling and conducting service calls, training, accident investigations, follow-up visits, and responses to agency requests for services.

b. Receipt of Claims.

- i. The TPA shall provide a method(s) for agencies to report claims and receive claims, particularly first reports of workers' compensation injury, electronically.
- ii. The TPA shall provide a toll-free telephone number for claim reporting (this can be the same number as for communication listed under "General" above.)
- iii. The TPA shall confirm employment and/or injury status of claimant with Risk Management if there is any question regarding such status.

c. File Creation and Maintenance.

- i. The TPA shall create a claim file within 24 hours of receipt of a claim. Files shall include diary entries, settling of reserves, all monetary transactions, supervision, cross reference to other segments of the file, and any other pertinent information.
- ii. The TPA shall fully document all statements and each contact with witnesses, claimant, the State, doctors, and other investigation efforts in memoranda or file activity notes in the file.
- iii. The TPA shall maintain accurate information about efforts to conclude the claim, offers of settlement made, and responses received. All attempts to settle shall be fully documented in the file.
- iv. Correspondence and all other documentation or communications received by the TPA shall be date stamped (either manually or electronically or both) on the day it is received and shall be documented in the file within 48 hours. If, after exhausting all possible investigation, correspondence or other documents cannot be matched with a claim file, the TPA will contact Risk Management for direction.
- v. The TPA shall establish diaries so claims are reviewed by the adjuster and supervisor on a 30 day schedule (the 30 days can vary between adjuster and supervisor) unless a longer schedule is approved by Risk Management.
- vi. The TPA shall prepare thoroughly documented notes to the file including liability, reserve history, expected settlement/closure date, telephone conversations, medical information, etc.

- vii. The TPA shall provide on-line access to Risk Management that includes all required software, at no additional cost. The online access shall include, but is not limited to, access by claim to the claim historical data, financial data, supervisory and adjuster notes, diary information, all payment information, and notes on the system confirming file reviews. Preferably the online access shall provide the Risk Manager the ability to run management reports on the State's claims as needed.

d. Claim Management.

- i. The TPA shall review all claims received from agencies, and process each to conclusion in accordance with applicable statutes, rules and regulations, Risk Management operating procedures or other instructions including but not limited to client service instructions.
- ii. The TPA shall conduct a thorough investigation of each reported claim to the extent necessary, which may include but is not necessarily limited to photographs, diagrams, police reports, statements from involved parties, statements from others including all witness to determine the state's liability, etc.
- iii. Initial statements and/or inspections shall be completed within 72 hours of receipt of the claim.
- iv. The TPA shall arrange for independent investigators, appraisers, or medical or other experts to the extent deemed necessary by the TPA in connection with processing of any claim. Assignment of such professional services must be approved by the Risk Manager prior to assignment.
- v. The TPA shall monitor the treatment programs recommended for injured employees by physicians, specialist and other health care providers by reviewing all reports prepared by them and maintain such contact with these providers as may be appropriate and may ensure that treatment is related to the compensable injury or injury.
- vi. The TPA shall maintain a close liaison with treating physicians to assure that employees receive proper care and to avoid over-treatment situations (e.g. requiring second opinion).
- vii. The TPA shall arrange or assist in arranging for rehabilitation or retraining of employees in appropriate cases. Included in this requirement is working with the employee and the agency regarding the employee's return to work.
- viii. The TPA shall provide access to medical care and medical cost containment services.
- ix. The TPA shall investigate subrogation possibilities and shall pursue subrogation when approved by the Risk Manager.

e. Reserves.

- i. The TPA shall maintain a current estimate of expected total cost of each claim and provide reserves and reserve calculation tracking including initial reserve establishment and all subsequent changes.
- ii. The TPA shall set reserves for claims assigned for handling as soon as there is sufficient information about the claim available to make a reasonable estimate of the value of the claim. In all cases, a reserve shall be set when the claim file is opened unless there is a documented reason for delaying setting the reserve. In claims where documentation is provided and the reserve is not set when the claim is opened, the reserve shall be set no later than five(5) days after receipt of the claim.
- iii. After reserves have been set, the TPA shall review and adjust reserves whenever new information that would change the evaluation is received. Because all necessary facts may not be available at the onset of a claim, reserves shall be adjusted when medical information or investigation indicates the existing reserve is inadequate or set too high. The adequacy of reserves must be reviewed at least every ninety (90) days, and the file shall be documented to reflect this review and substantiate any adjustments in the total reserve within 24 hours of the change.

f. Claim Payments.

- i. The TPA shall make payment of benefits, losses, and expenses as necessary.
- ii. The TPA shall perform reasonable and necessary administrative and clerical work in connection with claims or losses including, but not limited to, the preparation of checks drawn on the accounts established by the TPA for the purpose of paying State claims, monthly reconciliation of such accounts, and notification to Risk Management of all payments in excess of \$25,000.

g. Claim Settlement & Litigation.

- i. The TPA shall adjust and settle claims.
- ii. Settlements of claims must be approved by the Risk Manager. The Risk Manager will obtain approval of the Attorney General, if required.
- iii. The TPA shall assist the Attorney General's office or approved defense counsel with the litigation of State claims including, but not limited to, supplying detailed claim documentation in the format required by the Attorney General's office, drafting answers to interrogatories, providing medical organization and analysis, and participation as needed in hearings and settlement actions.
- iv. The TPA shall transfer complete investigation files to the Attorney General's office in the requested format whenever legal action is commenced against the State.

h. Communication with the State.

- i. The TPA shall provide written reports to the Risk Manager on all claims meeting criteria agreed upon by the Risk Manager and the TPA.
- ii. In the event the TPA receives notification of an occurrence involving death or multiple severe injuries with individual reserves over \$25,000.00, notice shall be provided to the Risk Manager immediately with notice not to exceed 24 hours from the TPA's receipt of notice.
- iii. The TPA shall furnish to the Risk Manager, the State's actuary, each state agency and other as requested by the Risk Manager, information reports in a format and on a schedule agreed to by the Risk Manager and as listed below:
 1. Transaction Report- monthly
 2. Bank Reconciliation – monthly
 3. Claims & Expenses Report – monthly (This report should also be divided by agency and each agency's portion should be submitted directly to it for review to ensure that the claim for its agency are legitimate. The agency should also be sent a summary that compares that month's claims to claims for the same time period the previous year and tracks the average claims for the years compared to the same time period as the previous year.)
 4. Type of Injury Report – quarterly
 5. Mid-month Payment Report (This report is a summary of expenditures part way through a month.)
 6. Large Loss Report - monthly (This report is a summary of the large losses/payments each month.)
 7. Pay Code Report – monthly (This report is a summary of payments by pay code.)
 8. Lag Time Report – quarterly by agency
 9. Medical Savings Report – monthly (This report is an executive summary of the medical program with medical detail reports by claimant, provider, provider type, ICD-9, DRG, etc.)
 10. Individual Agency Requests
 11. Ad Hoc Requests
- iv. The TPA shall provide narrative reports and ad hoc reports as requested by the Risk Manager.
- v. The TPA shall file all periodic reports required by regulatory agencies or courts, insurance companies, or other similar entities.
- vi. The TPA shall provide additional information, analysis, reports and services as requested by Risk Management.
- vii. At least quarterly, the TPA shall prepare for and complete in-person claims reviews with the Risk Manager and others as required by the Risk Manager.
- viii. The TPA shall meet monthly with the Risk Manager to review claims, settlements, strategy, and contract performance.

- ix. The TPA shall develop and provide statewide or agency specific programs and training sessions regarding claims procedures, resolution process, statutory and regulatory requirements, return to work, and other topics approved by the Risk Manager.
- x. The TPA shall log all service activities for the State in a format agreed upon by the Risk Manager and provide to Risk Manager on an agreed upon schedule.
- xi. The TPA shall provide criteria used to determine the effectiveness of claim handling and claim supervision by the TPA and report accomplishments of the criteria to the Risk Manager. Criteria should include measurement of quality and must be directly related to the success of the State's workers' compensation program.
- xii. The TPA shall have a SAS 70 report completed annually and must provide three (3) copies of the final SAS 70 report to the Risk Manager annually.

i. Medical Care/Medical Cost Containment.

The State will use the TPA for medical care/medical cost containment.

The State considers medical care/medical cost containment services to include, but not be limited to, the following:

- 1. Coordination of medical care (including return to work).
- 2. Independent medical exams.
- 3. Nebraska Workers' Compensation Court fee schedule review.
- 4. Hospital Bill Review.
- 5. Inpatient Precertification.
 - a. Initial Review.
 - b. Concurrent Review.
- 6. Outpatient Precertification.
- 7. Telephonic nurse case management.
- 8. On site, personal nurse case management.
- 9. Usual, customary, and reasonable review.
- 10. Peer review.
- 11. Utilization review.
- 12. Physical Therapy Precertification.
- 13. Occupational Therapy Precertification.
- 14. Managed Care.
- 15. Provider Network in Nebraska.
- 16. PPO(s) in Nebraska.
- 17. Prescription drug card.
- 18. Prescription step plans.
- 19. Additional medical cost containment services offered by TPA, not identified above.

II. TERMS AND CONDITIONS

A. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION

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

B. PERMITS, REGULATIONS, LAWS

FARA shall procure and pay for all permits, licenses, and approvals necessary for the execution of the contract. FARA shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

C. OWNERSHIP OF INFORMATION AND DATA

The State of Nebraska shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or derived by the FARA pursuant to this contract.

FARA must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks, and copyrights that are in any way involved in the contract. It shall be the responsibility of FARA to pay for all royalties and costs, and the State must be held harmless from any such claims arising from proper and limited use by State during the duration of the contract.

D. INSURANCE REQUIREMENTS

FARA shall not commence work under this contract until all the insurance required hereunder has been obtained and such insurance has been approved by the State. FARA shall maintain all required insurance for the life of this contract and shall ensure that the State Purchasing Bureau has the most current certificate of insurance throughout the life of this contract. FARA will be utilizing any Sub-FARAs, FARA is responsible for obtaining the certificate(s) of insurance required herein under from any and all Sub-FARA(s). FARA is also responsible for ensuring Sub-FARA(s) maintain the insurance required until completion of the contract requirements. FARA shall not allow any Sub-Contractor to commence work on any Sub-Contract until all similar insurance required of the Sub-Contractor has been obtained and approved by FARA. Approval of the insurance by the State shall not limit, relieve, or decrease the liability of FARA hereunder.

FARA shall maintain the following insurance with insurers that maintain an AM Best rating of A- or higher. If by the terms of any insurance a mandatory deductible is required, or if FARA elects to increase the mandatory deductible amount, FARA shall be responsible for payment of the amount of the deductible in the event of a paid claim.

1. Business Automobile Liability insurance with combined single limits of \$2,000,000.00;
2. Fidelity / Commercial Crime Liability insurance with minimum limits per claim of \$5,000,000.00;
3. Commercial General Liability insurance with limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and including contractual liability, personal and advertising injury, and products and completed operations coverage;
4. Umbrella / Excess Liability insurance providing additional limits of \$10,000,000.00 per occurrence and \$10,000,000.00 in the aggregate over the Employers Liability, Business Automobile Liability and Commercial General Liability policies required above;
5. To the extent that coverage remains available on commercially reasonable terms (using an objective reasonable person standard), Professional Errors and Omissions coverage responding to FARA's errors, acts, or omissions in the amount of \$2,000,000.00 per claim and in the aggregate; and
6. Cyber / Information Technology insurance in the amount of \$5,000,000.00 per claim, including coverage for costs of third-party notification, credit monitoring, and fraud protection.

WORKERS' COMPENSATION INSURANCE

a. FARA shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, FARA shall require the Sub-Contractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Sub-Contractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

b. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY**

Coverage A	Statutory
Coverage B	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

SUBROGRATION WAIVER

“Waiver of Subrogation on the Worker's Compensation in favor of the State of Nebraska.”

LIABILITY WAIVER

“The State of Nebraska, Certificate holder, is an additionally insured, primary & noncontributory on the General Liability.”

7. EVIDENCE OF COVERAGE

FARA should furnish the State, a certificate of insurance coverage complying with the above requirements to the attention of The Department of Administrative Services, Risk Management Division, 521 South 14th Street, Suite 104, Lincoln, NE 68508 (facsimile: 402-471-2800).

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

Notice of cancellation of any required insurance policy must be submitted to The Department of Administrative Services, Risk Management Division when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

E. COOPERATION WITH OTHER CONTRACTORS

The State may already have in place or choose to award supplemental contracts for work related to this contract, or any portion thereof.

1. The State reserves the right to contract jointly between two or more potential contractors, if such an arrangement is in the best interest of the State.
2. FARA shall agree to cooperate with such other contractors, and shall not commit or permit any act which may interfere with the performance of work by any other contractor.
3. Any additional costs for third party contractor integration are not contemplated herein and shall be determined and bore in full by third party contractor.

F. INDEPENDENT CONTRACTOR

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. FARA represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. FARA's employees and other persons engaged in work or services required by FARA under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against FARA, its officers, or its agents) shall in no way be the responsibility of the State. FARA will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights, or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

G. CONTRACTOR RESPONSIBILITY

FARA is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the contract. FARA shall be the sole point of contact regarding all contractual matters.

If FARA intends to utilize any Sub-Contractor's services, the Sub-Contractor's level of effort, tasks, and time allocation must be clearly defined in the FARA's proposal, as submitted in Contract 36387 O4. The FARA shall agree that it will not utilize any Sub-Contractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State. Following execution of the contract, FARA shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

H. CONTRACTOR PERSONNEL

FARA warrants that all persons assigned to the project shall be employees of the FARA or specified Sub-Contractors, and shall be fully qualified to perform the work required herein. Personnel employed by FARA to fulfill the terms of the contract shall remain under the sole direction and control of FARA. FARA shall include a similar provision in any contract with any Sub-Contractor selected to perform work on the project.

Personnel commitments made in FARA's proposal, as submitted in Contract 36387 O4, shall not be changed without the prior written approval of the State. Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The State reserves the right to require FARA to reassign or remove from the project any FARA or Sub-Contractor employee. Contractor will cooperate with the State to the fullest extent possible; however, Contractor reserves the right to hire, promote or terminate its employees to comply with the law and effectively manage our business.

In respect to its employees, FARA agrees to be responsible for the following:

1. any and all employment taxes and/or other payroll withholding;
2. any and all vehicles used by FARA's employees, including all insurance required by state law;
3. damages incurred by FARA's employees within the scope of their duties under the contract;
4. maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
5. determining the hours to be worked and the duties to be performed by the FARA's employees.

I. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

FARA shall not, at any time, recruit or employ any State employee or agent who has worked on the contract, or who had any influence on decisions affecting the contract.

J. CONFLICT OF INTEREST

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

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

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

K. ERRORS AND OMISSIONS

FARA shall not take advantage of any errors and/or omissions in this contract. FARA must promptly notify the State of any errors and/or omissions that are discovered.

L. BEGINNING OF WORK

FARA shall not commence any billable work until a valid contract has been fully executed by the State and FARA. FARA will be notified in writing when work may begin.

M. ASSIGNMENT BY THE STATE

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

N. ASSIGNMENT BY FARA

FARA may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

O. GOVERNING LAW

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. FARA must be in compliance with all Nebraska statutory and regulatory law.

P. ATTORNEY'S FEES

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, FARA agrees to pay all expenses of such action, as permitted by law, including reasonable attorney's fees and costs, if the State is the prevailing party. The same is true for FARA if it is the prevailing party.

Q. ADVERTISING

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

R. STATE PROPERTY

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

S. SITE RULES AND REGULATIONS

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

T. NOTIFICATION

All notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this contract, in person, or upon delivery by U.S. Mail, facsimile, or e-mail.

1. Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.
2. Whenever the FARA encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the FARA shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

U. EARLY TERMINATION

The contract may be terminated as follows:

1. The State and FARA, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to FARA. Such termination shall not relieve the FARA of warranty or other service obligations incurred under the terms of the contract. In the event of termination FARA shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:

- a. If directed to do so by statute;
- b. FARA has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
- c. A trustee or receiver of FARA or of any substantial part of FARA's assets has been appointed by a court;
- d. Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by FARA, its employees, officers, directors, or shareholders;
- e. An involuntary proceeding has been commenced by any party against FARA under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) FARA has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) FARA has been decreed or adjudged a debtor;
- f. A voluntary petition has been filed by FARA under any of the chapters of Title 11 of the United States Code;
- g. FARA intentionally discloses confidential information;
- h. FARA has or announces it will discontinue support of the deliverable; and
- i. Second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau.

Upon termination, regardless of the reason for or type of termination, FARA shall cooperate with the State and any new TPA during the transition of the contract to the new TPA. Upon request by the State, FARA shall provide all State information maintained by FARA in a reasonable time frame approved by the State Risk Manager. Information provided via tape or other electronic transfer shall be in existing format and shall include, but not be limited to, file layouts and legends. FARA shall provide such explanation of the information provided as to facilitate a smooth transition.

V. TRANSITION PLAN REQUIREMENTS

Upon termination or end of contract, FARA shall cooperate with the State and any new TPA during the transition of the contract to the new TPA. Upon request by the State, FARA shall provide all State information maintained by FARA in a reasonable time frame approved by the State Risk Manager. Information and data provided via tape or other electronic transfer shall be in existing format and shall include, but not limited to file layouts and legends. FARA will cooperate with the new TPA to facilitate a smooth transition. FARA will return all physical files in its possession.

The costs and expenses incurred by FARA in returning such files and providing any required computerized claims data tapes (transition expenses) will be billed with documentation showing such costs, to the State by the FARA. Within 45 days following the effective date of termination or expiration of services under this Contract, the State shall pay any accrued but unpaid fees and expenses payable for services rendered by FARA through the date of termination or expiration, including but not limited to the transition expenses.

W. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give FARA written notice thirty (30) calendar days prior to the effective date of any termination, and advise FARA of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. FARA shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall FARA be paid for a loss of anticipated profit.

X. BREACH BY CONTRACTOR

The State may terminate the contract, in whole or in part, if FARA fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to FARA, allow FARA to cure a failure or breach of contract within a period of thirty (30) calendar days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing FARA time to cure a failure or breach of contract does not waive the State's right to terminate the contract with a fifteen (15) day notice for the same or different contract breach which may occur at a different time.

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the contract, upon written notice from the State, FARA shall deliver assurances in the form of additional FARA resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

Y. ADMINISTRATION – CONTRACT TERMINATION

1. FARA must provide confirmation that upon contract termination all deliverables prepared in accordance with this agreement shall become the property of the State of Nebraska; subject to the ownership provision (Section C) contained herein, and is provided to the State of Nebraska at no additional cost to the State.
2. FARA must provide confirmation that in the event of contract termination, all records that are the property of the State will be returned to the State within thirty (30) calendar days. Notwithstanding the above, FARA may retain one copy of any information as required to comply with applicable work product documentation standards or as are automatically retained in the course of FARA's routine back up procedures.

Z. FORCE MAJEURE

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if FARA is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon FARA. To obtain release based on a Force Majeure Event, FARA shall file a written request for such relief with the Department of Administrative

Services, Risk Management. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

AA. PERFORMANCE BOND

FARA is required to supply a cashier's check or a bond executed by a corporation authorized to contract surety in the State of Nebraska, payable to the State of Nebraska, which shall be valid for the life of the contract to include any renewal and/or extension periods and held by the State. The amount of the cashier's check or bond must be \$350,000.00. The check or bond, will guarantee that FARA will faithfully perform all requirements, terms and conditions of the contract. If FARA chooses to provide a cashier's check, the check must show an expiration date on the check. Cashier's checks will only be allowed for contracts for three (3) years or less, including all renewal options. Failure to comply shall be grounds for forfeiture of the check or bond as liquidated damages. Amount of forfeiture will be determined by Department of Administrative Management, Risk Management Division based on loss to the State. The bond or cashier's check will be returned when the service has been satisfactorily completed as solely determined by the State, after termination or expiration of the contract.

BB. PAYMENT

State will render payment to FARA when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the FARA as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require FARA to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by FARA prior to the Effective Date, and FARA hereby waives any claim or cause of action for any such services.

CC. INVOICES

Invoices for payments must be submitted by FARA to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in FARA's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

The State will pay service fees upon quarterly invoices. Each invoice must identify the activities performed during the quarter for which payment is being requested. Alternate payment schedules will be considered, provided an explanation for other than quarterly payments is provided.

Escrow accounts for payment of claim expenses will be paid/replenished based on monthly invoices. The invoices must contain adequate information to reconcile the invoice with claims documentation and the State's escrow account balance. The State discourages escrow replenishment more frequently than monthly but will consider pre-funding individual claims at a specific dollar amount. Any delay in funding of the escrow due to FARA's failure to provide adequate or timely invoices or supporting documentation shall not relieve FARA of its obligation to make timely claim payments and to pay any penalties for failure to do so.

DD. RIGHT TO AUDIT

FARA shall establish and maintain a reasonable accounting system that enables the State to readily audit contract. The State and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract kept by or under the control of FARA, including, but not limited to those kept by FARA, its employees, agents, assigns, successors, and Sub-Contractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

FARA shall, at all times during the term of this contract and for a period of five (5) years after the completion of this contract, maintain such records, together with such supporting or underlying documents and materials. FARA shall at any time requested by the State, whether during or after completion of this contract and at FARA's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the State. Such records shall be made available to the State during normal business hours at FARA's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the State. FARA shall ensure the State has these rights with FARA's assigns, successors, and Sub-Contractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between FARA and any Sub-Contractors to the extent that those sub-contracts or agreements relate to fulfillment of FARA's obligations to the State.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the State unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by FARA to the State in excess of one-half of one percent (.5%) of the total contract billings, FARA shall reimburse the State for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, FARA shall reimburse the State for total costs of audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of FARA's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the State's findings to FARA.

EE. TAXES

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

FF. INSPECTION AND APPROVAL

Final inspection and approval of all work required under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where FARA or Sub-Contractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

GG. CHANGES IN SCOPE/CHANGE ORDERS

The State may, upon the written agreement of FARA, make changes to the contract within the general scope of the contract. Changes in scope shall only be conducted with the written approval of the State Risk Manager. (The State retains the right to employ the services of a third party to perform any change order(s)).

The State may, at any time work is in progress, by written agreement, make alterations in the terms of work as shown in the specifications, require the FARA to make corrections, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. FARA shall not claim forfeiture of contract by reasons of such changes by the State. Corrections of any deliverable services or performance of work required pursuant to the Contract shall not be deemed a modification requiring a change order.

HH. SEVERABILITY

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

II. CONFIDENTIALITY

All materials and information provided by the State or acquired by FARA on behalf of the State shall be regarded as confidential information. All materials and information provided by the State or acquired by FARA on behalf of the State shall be handled in accordance with federal and state law, and ethical standards. FARA must ensure the confidentiality of such materials or information. Should said confidentiality be breached by FARA; FARA shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon FARA to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.00.

All data including medical, financial and personnel information reviewed and collected in connection with this resulting contract shall be held in strict confidence and shall not be released, disclosed, or published by FARA without the written consent of the State. Release to the State of others, including but not limited to the Workers' Compensation Court, the State's TPA for property and liability claims, and the Attorney General's Office, required to provide a service under this contract shall not be a violation of this provision.

JJ. PROPRIETARY INFORMATION

Data contained in this contract and all documentation provided therein, become the property of the State of Nebraska and the data becomes public information.

KK. PRICES

All prices, costs, and terms and conditions outlined in the contract shall remain fixed and valid commencing on effective date of contract.

FARA represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which FARA has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, FARA shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, FARA shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

FARA also represents and warrants that all prices set forth in the contract and all prices in addition, which FARA may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. FARA agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by this contract.

LL. INDEMNIFICATION

1. GENERAL

FARA agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials (“the indemnified parties”) from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses (“the claims”), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of FARA, its employees, Sub-Contractors, consultants, representatives, and agents, except to the extent such FARA liability is attenuated by any action of the State which directly and proximately contributed to the claims. State to immediately notify FARA of any such claims prior to incurring any expenses.

2. INTELLECTUAL PROPERTY

FARA agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by FARA or its employees, Sub-Contractors, consultants, representatives, and agents; provided, however, the State gives FARA prompt notice in writing of the claim. FARA may not settle any infringement claim that will affect the State’s use of the Licensed Software without the State’s prior written consent, which consent may be withheld for any reason.

State agrees to limit use to proper use as explained herein and terminate said proper use at termination of contract. Proper use of Intellectual Property includes activities as outlined in the agreed upon Scope of Services regarding import or export of documents and access by proper individuals within the dates of the contract only.

If a judgment or settlement is obtained or reasonably anticipated against the State’s use of any intellectual property for which FARA has indemnified the State, FARA shall, at

FARA's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by FARA, and the State may receive the remedies provided under this contract.

3. PERSONNEL

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

MM. NEBRASKA TECHNOLOGY ACCESS STANDARDS

FARA shall review the Nebraska Technology Access Standards, found at <http://nrtc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards. In the event such standards change during FARA's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

NN. ANTITRUST

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

OO. DISASTER RECOVERY/BACK UP PLAN

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

PP. TIME IS OF THE ESSENCE

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

QQ. DRUG POLICY

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

RR. EMPLOYEE WORK ELIGIBILITY STATUS

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

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

1. The FARA must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>
2. If FARA indicates on such attestation form that he or she is a qualified alien, FARA agrees to provide the US Citizenship and Immigration Services documentation required to verify the FARA's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. FARA understands and agrees that lawful presence in the United States is required and the FARA may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.


SS. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY
FARA, by signature to this contract, certifies that FARA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). FARA also agrees to include the above requirements in any and all sub-contracts into which it enters. FARA shall immediately notify the Department if, during the term of this contract, FARA becomes debarred. The Department of Administrative Services, Risk Management Division may immediately terminate this contract by providing FARA written notice if FARA becomes debarred during the term of this contract.

FARA, by signature to this contract, certifies that FARA has not had a contract with the State of Nebraska terminated early by the State of Nebraska. If FARA has had a contract terminated early by the State of Nebraska, FARA must provide the contract number, along with an explanation of why the contract was terminated early. Prior early termination may be cause for rejecting the contract.

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In witness whereof, this contract has been executed by the parties hereto as of the effective date of the contract indicated above.

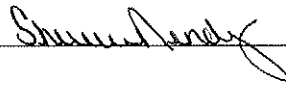
F A Richard & Associates, Inc.

By: 
(Print) Jody A Gray

Title: Sr. Vice President

Date: May 18, 2015

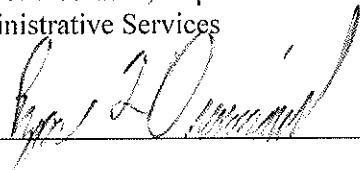
State of Nebraska, Department of
Administrative Service, Risk Management
Division

By: 
(Print) Shereece Dendy

Title: State Risk Manager

Date: 5/21/2015

State of Nebraska, Department of
Administrative Services

By: 
(Print) Byron L. Diamond

Title: Director

Date: 5/21/2015