

DOC # 0762600  
04/26/2010 02:38 PM Deputy: PK

OFFICIAL RECORD  
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Assessor's Parcel Number: N/A

Date: APRIL 26, 2010

Recording Requested By:

Douglas County - NV  
Karen Ellison - Recorder  
Page: 1 Of 39 Fee: 0.00  
BK-0410 PG- 4733 RPTT: 0.00



Name: DARCY WORMS, HUMAN RESOURCES

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$ N/A

DEFERRED COMP PLAN DOCUMENT #2010.099

(Title of Document)

# Nevada Public Employees' Deferred Compensation Program

## Plan Document

*Ted Thran*  
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CLERK

2010 APR 26 AM 10:05

NO. 2010-099

FILED



Nevada Deferred Compensation  
YOUR PLAN...YOUR FUTURE

Revised November 2009

**PREAMBLE**

This Plan has been adopted pursuant to NRS 287.250 – 287.370, and Title 26 IRS Code, Section 457. **Deferred Compensation Plans.**

**The primary purpose of this Plan is to permit Employees of the Employer to enter into an agreement which will provide for deferral of payment of a portion of their current compensation until death, retirement, termination of employment, or other event, in accordance with the provisions of Section 457 of the Internal Revenue Code, with other applicable provisions of such Code, and in accordance with the Nevada Revised Statute (NRS).**

**It is intended that the Plan shall qualify as an Eligible Deferred Compensation Plan within the meaning of Sections 457(b) of the Code sponsored by an Eligible Governmental Employer.**

**Neither the Employer nor the Committee represents or guarantees that any particular federal or state income, payroll or other tax consequence will occur by reason of participation in this Plan. A Participant should consult with his or her own attorney or other representative regarding all tax or other consequences of participation in this Plan.**

**ARTICLE I**

**DEFINITIONS**

**1.1 Plan Definitions**

For purposes of this Plan, the following words and phrases shall have the meaning set forth below, unless a different meaning is plainly required by the context:

**"Adjusted"** means adjusted for the cost of living at the time and in the manner as prescribed under Sections 457(e)(15) of the Code.

**Alternate Payee** means the person who is or was the spouse of the Participant or is the child of the Participant to the extent that such person is entitled to any or all of a Participant's Account under a court order that the Committee has determined to be Plan approved Qualified Domestic Relations Order.

**"Beneficiary"** means any person designated by the Participant to receive an annuity, death benefit, or other benefit under the provisions of this Plan, by reason of such Participant's death.

**"Code"** means the Internal Revenue Code of 1986 as amended and thereafter and any related regulations.

**"Compensation"** means Compensation from the Employer that is currently includible in gross income for federal income tax purposes (i.e., taxable income). Such term also includes any amount excludable from gross income under this Plan or any other plan described in Section 457(b) of the Code and "elective contribution" amounts that are paid out of an Employee's Compensation that are not includible in gross income under Code Sections 125, 401(k), 402(e)(3), 402(h)(1)(B) or 403(b). Includible Compensation does not include any amount excludable from gross income under any pick-up program under Section 414(h)(2) of the Code, or any other amount excludable from gross income for income tax purposes.

**"Committee"** means any individual(s), or Committee appointed by the State to serve as the Plan administrator and trustee over the Plan.

**"Deferred Compensation"** means that portion of an Employee's Compensation, which said Employee has elected to defer in accordance with the provisions of this Plan.

**"Defined Benefit Governmental Plan"** means a pension plan established under Code Section 401(a) in the which the retirement benefits are defined by a set formula.

**"Direct Rollover"** means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee. This includes transfers to all or a portion of the Participant Account to a Defined Benefit Governmental Plan.

**"Distributee"** means a person receiving funds, include a Participant. In addition the Participant's spouse or former spouse who is the Alternate Payee under the Qualified Domestic Relations Order as defined in Code Section 414(p) is a Distributee with regard to the interest of the spouse or former spouse.

**"Eligible Retirement Plan"** means any government 457(b) plan, a 403(b) program, a 401(a) qualified plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b).

**"Eligible Governmental Employer"** means a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State.

**"Employer "** means the State of Nevada. The term also means any political subdivision or other public entity of the State of Nevada, which enters into an agreement with the Committee to participate in the Plan as described in section 2.1.

**"Eligible Employee"** means any full-time, permanent part-time, seasonal, or temporary employee of the Employer.

**" Minimum Required Distribution Date"** means, according to Code Section 401(a)(9)(c), April 1 of the calendar year following the later of:

- A. the calendar year in which the Participant attains age 70 ½ , or
- B. the calendar year in which the Participant severs employment with the eligible employer, or
- C. As otherwise determined in IRC

**"Normal Retirement Date"** means the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the State or tax-exempt entity (or money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), immediate benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70 ½ .

**"Participant"** means any individual who performs services for the Employer either as an Employee, who elects to participate in this Plan or who has unpaid benefits due under the Plan, as well as any separated employee or beneficiary who has unpaid benefits due under the Plan.

**"Participant Agreement"** means an agreement filed by an Employee to elect or modify participation in the Plan.

**"Participation Account"** means the bookkeeping account to which there is credited the Participant's Deferred Compensation, together with any interest, dividends, gains, losses, or the like thereon.

**"Plan"** means State of Nevada Deferred Compensation Plan, an Eligible Deferred Compensation Plan.

**“Plan Provider”** means any provider of Deferred Compensation Plan Services contracted by the Committee to provide investment services and/or plan administration, which includes but is not limited to record keeping, participant education and enrollment services.

**“Plan Year”** means the fiscal year during which the Plan becomes effective, and each succeeding year during the existence of this Plan.

**“Qualified Domestic Relations Order (QDRO)”** means a court order, judgment or decree that creates or recognizes the existence of the rights of someone other than the Participant to an interest in the Participant’s Account. The Alternate Payee, referred to as an A.P., must be the Participant’s spouse, former spouse, or child.

**“Regulations”** means the Federal Income Tax Regulations including proposed and temporary regulations, as promulgated by the Secretary of the Treasury or the Secretary’s delegate, and as amended from time to time.

**“Severance From Employment”** means the necessary triggering event for distribution within the meaning of Section 402(d)(4)(D) of the Code or on account of the Participant’s death or retirement.

**“Staff”** means the Deferred Compensation Program staff, including the Executive Officer. The Executive Officer, under direction of the Committee, is responsible for the day to day management of the Program.

**“State”** means the State or Commonwealth that is the Employer or the State or Commonwealth of which the Employer is a political subdivision or an agency or instrumentality.

**“Trust”** means the separate Trust that is created under Article III to hold designated assets of the Plan. The Trust shall be used for the exclusive benefit of all Participants and their Beneficiaries.

**“Trustee”** means the Committee, or any individual(s) or committee appointed by the State to serve as trustee of the Plan. **“Unforeseeable Emergency Distribution”** means a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant’s or beneficiary’s spouse, or the participant’s or beneficiary’s dependent (as defined in section 152(a)); loss of the participant’s or beneficiary’s property due to casualty (include the need to rebuild a home following damage to a home not otherwise covered by the homeowner’s insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary.

**ARTICLE II**

**OPERATION OF PLAN**

**2.1 Participation**

(a) **State Employees** : Any State Employee may elect to become a Participant in the Plan and to defer payment of part of his compensation not yet earned by executing a written Participation Agreement and filing it with the Employer. The Employer shall defer payment of Participant compensation in the amount specified in each Participation Agreement filed with the Employer.

(b) **Other Public Employees** : Political subdivisions and other public entities of the State may participate in the Plan for their Employees by entering into a written agreement with the Committee to abide by the terms and conditions of this Plan document and any administrative rules, policies and procedures established by the Committee. The governing body of each political subdivision or other public entity of the State electing to participate in this Plan must submit written evidence that the entity has appointed the Committee to administer the Plan on behalf of its participating employees.

Participating employers under this paragraph (b) may establish and administer other deferred compensation plans and are solely responsible for ensuring that the deferral limitations of the Code are satisfied if the employer allows an employee to participate in both plans in the same taxable year. If any deferral limitation is exceeded because of such multiple plan participation, the participating employer is responsible for taking corrective action with the other plans first before any corrective action will be required under this Plan.

A participating employer under this paragraph (b) may terminate its participation in the Plan by providing appropriate written notice to the Committee.

**2.2 Participation Agreement**

The Committee shall establish a written Participation Agreement, which shall contain, among other provisions, a provision whereby the Participant specifies:

- (a) that portion of his/her Compensation which is to be deferred.
- (b) his/her investment selections from available options.
- (c) a Beneficiary or Beneficiaries, including one or more contingent Beneficiaries, to receive any benefits which may be payable under this Plan or on the death of the Participant.
- (d) that his salary, wage or other compensation is as set forth in any salary ordinance or otherwise without deductions for amounts deferred under the provisions of this plan.
- (e) that the participant together with his heirs, successors, and assigns, holds harmless the Employer from any liability hereunder for all acts performed in good faith, including acts relating to the investment of deferred amounts and/or the Employee's investment preference hereunder.

(f) a payment option and payment frequency (monthly, quarterly, semi-annually or annually) if applicable. The option and payment frequency selected may be changed at any time unless the participant has purchased an annuitized payment option.

### **2.3 Agreement Effective Date**

If the Participation Agreement is received prior to the 15th of the month, it will take effect on the first payday of the following month. If received on or after the 15th, it will take effect on the first payday of the second month following. Thereafter, during each employment year in which the Employee is a Participant in the Plan, that portion of said Compensation which is specified by the Employee in the Participation Agreement shall be deferred and paid in accordance with the provisions of this Plan.

### **2.4 Amendment of Participation Agreement**

The Participant may revoke his election to participate and may change the amount of Compensation to be deferred, or his investment preference, by signing and filing with the Committee a written revocation or amendment, on a form approved by the Committee. Any such revocation or amendment shall be effective prospectively only, beginning with the first pay period of the subsequent month.

### **2.5 Regular Contributions**

The regular contribution is the amount of compensation, which may be deferred by a Participant subject to the following limitations:

The maximum amount a Participant may defer during a calendar year to this and/or any other eligible deferred compensation plan shall not exceed the lesser of: (i) the applicable dollar amount as set forth in Section 457 (e)(15) of the Code; or (ii) 100% of the Participant's Includible Compensation.

**Pay Period Minimum** – The minimum amount a Participant may defer is \$12.50 per biweekly pay period.

### **2.6 Catch-Up Contributions**

**(a) Pre-Retirement Catch-up Contribution** – A Participant may defer an additional amount under this "catch-up provision", for one or more of the last three calendar years ending prior to, but not including, the year the Participant's elected normal retirement age. The maximum amount a participant may defer under Section 457(b)(3) of the Code each calendar year to this or any other Eligible Deferred Compensation Plan shall not exceed the lesser of: (1) twice the applicable dollar limit as set forth in Section 457(e)(15) of the Code; or (2) the applicable dollar limit as set forth in Section 457(e)(15) of the Code plus any Employer provided compensation eligible for deferral that was not deferred for any prior taxable year which began after December 31, 1978.



**(b) Age 50+ Catch-up Contribution** -A participant who has attained age 50 before the close of any taxable year is eligible to make catch-up contributions in accordance with, and subject to the limitations of, Code Section 414 (v).

**(c)** In any year where the catch-up contributions under both subsection (a) and subsection (b) apply to a Participant, such Participant may make catch-up contributions in an amount equal to either the amount described in subsection (a) or subsection (b), whichever is greater.

## **2.7 Employer Contributions**

Nothing in this Plan prohibits the Employer from making deposits to a Participant's Participation Account as additional compensation for services rendered, subject to the Participant's regular contribution limits.

## **2.8 Rollover Contributions**

**(a)** Rollovers will be accepted into the plan, in addition to deferred compensation contributions, to the extent permitted by the Code. The plan will accept direct rollovers and contributions of eligible rollover distributions from qualified plans described in Section 402(c)(4) of the Code.

**(b)** The election described in subsection (a) also applies to the surviving spouse after the participant's death or a spouse or former spouse who is the alternate payee under a plan approved domestic relations order.

**(c)** Within a reasonable period or in advance of making an eligible rollover distribution from the plan, the Plan's administrator shall provide a written explanation of rollover eligibility to the recipient as required by Code Section 402(f). The Committee may also require the Employee to certify, either in writing or in any other form permitted under the rules promulgated by the IRS that the contribution qualifies as a Rollover Contribution.

**(d)** The Plan shall account for rollover contributions, including a separate accounting rollover contributions subject to tax on premature distribution under Code Section 72(t). If it is later determined that all or part of a Rollover Contribution was ineligible to be contributed to the Plan, the Committee shall direct that any ineligible amounts, plus earnings or losses attributed be there to be distributed from the Plan to the Employee as soon as administratively feasible.

## **2.9 Military Service Benefits**

Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service will be provided in accordance with Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (Title 38 U.S. Code, Chapter 43, Sections 4301-4333, Public Law 103-353). Subject to the limitations of Code Section 414(u), a participant eligible under this section 2.9 will be permitted to make additional elective deferrals under the plan up to the maximum amount that the participant would have been permitted to make under the Plan during the period of qualified military service.

## ARTICLE III

### INVESTMENT RESPONSIBILITIES

#### 3.1 Trust

A Trust is hereby created to hold all assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that certain assets may be held in custodial accounts and contracts described in Section 401(f) of the Code pursuant to Section 457(g) of the Code. The Committee shall determine which assets shall be held in the Trust and which shall be held in a custodial account or contract described in Section 401(f) of the Code (if applicable) and shall notify the participants regarding this issue. Expenses and taxes may be paid from the Trust as provided in section 3.3. The trustee shall be the Committee or such other person, which agrees to act in that capacity there under.

#### 3.2 Investment Powers of Trustee

The Trustee shall have the powers listed in this Section with respect to the investment of Trust assets, except to the extent that the investment of Trust Assets is directed by Participants, pursuant to sections 3.6 and 3.7.

- (a) To invest and reinvest the Trust without distinction between principle and income in common and preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, certificates of deposit, and contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration and guaranteed interest contracts.
- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Section 457 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent participation in the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (d) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (e) To open and maintain any bank accounts in the name of the Plan, the Employer, or the nominee or agent of the foregoing, including the Administrator, in any banks.
- (f) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

#### 3.3 Taxes and Expenses

All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust.

**3.4 Payment of Benefits**

The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Trustee, or by any custodian or other provider so authorized by the Trustee to make such disbursement. The Trustee, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

**3.5 Investment of Plan Assets Held in Custodial Accounts and Contracts**

All assets of the Plan held in custodial accounts and contracts described in Section 401(f) of the Code shall be invested and reinvested at guaranteed rates of interest or by variable investment options.

**3.6 Employer's Investment Rights**

The Committee shall direct the Plan Provider to invest amounts equal to the deferred compensation credited to a Participation Account in accordance with his or her requests. The Committee shall establish a default investment allocation under the investment Options established under subsection.

(a) of this section for all Participants and Beneficiaries who do not make an investment allocation request under this section 3.6.(a) The Committee, Staff and its members are not fiduciaries and are not liable for any loss resulting from a Participant's or Beneficiary's exercise or failure to exercise control over his or her individual account provided under the Plan, including but not limited to, any request or failure to request an investment allocation under section this section 3.6.

(b) A Participant or Beneficiary is not a fiduciary by reason of the exercise or failure to exercise control over his or her individual account as permitted under the Plan.

**3.7 Amendment of Investment Preference**

The Participant may amend his statement of investment preference by filing with the Committee signed amendment on a form approved by the Administrator. Such amendment will, unless specifically stated otherwise, apply only to future amounts deferred under the Plan.

**3.8 Investment Disclaimer**

Any action by the Committee in investing funds, or approving any such investment of funds, shall not be considered to be either an endorsement or a guarantee of any investment; nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided under the distribution guidelines given below.

**3.9 Statements**

The Committee will cause to be issued statements periodically to reflect the actual earnings, gains, contributions and losses posted to the Participation Accounts.

**ARTICLE IV  
DISTRIBUTIONS**

**4.1 Eligibility**

Code Section 457 and the applicable regulations determine the Participant's eligibility for a distribution and payment option available. Distribution may be taken under any of the following circumstances:

- (a) Severance from employment;**
- (b) Participant's death;**
- (c) Approval of request for unforeseeable emergency withdrawal;**
- (d) Attainment of age 70 ½, whether or not the employee is severed from employment. However, the Employee may still continue to contribute to the Plan, whether or not they begin a distribution, as permitted under the Code.**
- (e) Subject to certain requirements outlined in section 4.4, in-service de minimis withdrawal.**
- (f) In-Service Distributions from Rollover Accounts. If a Participant has a separate account attributable to rollover contributions to the plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.**

**4.2 Distribution**

Distribution must follow the minimum distribution requirements of Sections 401(a)(9) and 457(d) of the Code as they may be amended from time to time. All minimum distributions required to be made under the Plan will be made in accordance with Code Section 401(a)(9). The Code and Regulations will override any inconsistent provisions in this Plan.

Upon becoming eligible in accordance with section 4.1 hereof, distribution is subject to the following guidelines:

- (a) A Participant may elect to commence distribution in accordance with the payment options set forth at section 4.3 hereof. (b) A Participant currently receiving non-annuitized distribution may make changes to their elections concerning benefit payment form and timing, with the exception of any minimum distribution requirements.**
- (c) If eligibility for distribution is on account of the Participant's death, distribution shall commence in accordance with section 4.8 hereof.**
- (d) Notwithstanding any provision of the Plan to the contrary, distribution must commence no later than April 1st following the later of (i) the calendar year in which the Participant attains age**

70 ½, unless still employed, or (ii) the calendar year in which the Participant severs employment and shall be made under one of the options provided under section 4.3 and in accordance with Section 401(a)(9) of the Code.

(e) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

#### **4.3 Payment Options**

**Installment Payments** – Upon becoming eligible for a distribution, a Participant may elect to receive so much of his or her account installment payments made at least annually. A Participant may elect to choose a lump sum payment distribution option in addition to the various systematic payout options that are available and may vary the amount or frequency of any such payments. However, at no time may the installment payment period exceed the Participant's life expectancy as determined by Treasury Regulations. The payout options described under this section do not apply to participants that elect to have their distributions annuitized.

#### **4.4 Distribution For Certain Non-Participating Participant**

Notwithstanding any provision of the Plan to the contrary, if the total amount of a Participant's Participation Account under the Plan does not exceed the dollar limit (up to \$5,000) under Code Section 401(a)(11)(A), the Participant may elect to receive (or the Committee may elect to pay to the Participant without the Participant's consent) the total amount in a single sum payment with 60 days of such election only if:

- (a) No amount has been deferred under the Plan with respect to such Participant during the two-year period ending on the date of the distribution, and
- (b) There has been no prior distribution under the Plan to such Participant to which this section 4.4 applied.
- (c) If a participant's account balance does not exceed the dollar limit and the participant has not elected a distribution upon severance from service, the account may be automatically cashed out without the participant's consent. Upon issuance of the Treasury regulations, such amounts will be sent to a designated IRA provider when the participant refuses to take the cash amount or tell the plan where to send the money. The rollover to an IRA occurs only when the cash out amount is greater than \$1,000 (including any rollover contributions).
- (d) Rollover contributions are disregarded in applying such cash-out provisions.

#### **4.6 Payment Frequency**

If the Participant has elected a payment option requiring installment payments, the Participant may also elect to have such payment made either monthly, quarterly, semi-annually or annually.

#### **4.7 Distribution Schedule in the Event for the Participant's Death**

In the event of the Participant's death, the full amount credited to the Participant's Participation Account (including earnings and net gain or loss), less any federal or State income tax required to be withheld, shall be distributed according to the following requirements:

- (a) If distribution has commenced prior to the death of the Participant, the balance of a Participant's Participation Account shall be paid to the Beneficiary in accordance with the payment option already selected by the Participant so that the remaining distribution will be effected at least as rapidly as under the payment option used before the Participant's death.
- (b) Either 1) the entire interest must be distributed by December 31 of the calendar year containing the 5th anniversary of the participant's death; or 2) must begin by December 31 of the calendar year after the death, payable over the life/life expectancy of the beneficiary.
- (c) A spousal beneficiary may defer distribution no later than the calendar year immediately following the calendar year the deceased Participant would have reached age 70 ½ and may take a distribution under the payment option provided at section 4.3 for a period not exceeding his/her own life expectancy.
- (d) If the Beneficiary fails to make such selection, payments shall be made to the Beneficiary in accordance with section 4.3(b) over a 10-year period.
- (e) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

The plan provider shall process distribution requests immediately upon receipt of all required forms.

#### **4.8 Unforeseeable Emergency Distribution**

Notwithstanding any other provisions of this Plan, a Participant may apply for a lump sum withdrawal of funds from the Plan under certain emergency conditions. The Committee will evaluate the request for conformity with its interpretation of the applicable regulations.

The Participant must satisfy the Committee that all of the following conditions are met before the Committee may authorize the emergency withdrawal:

- (a) Major unexpected and unreimbursable expenses exist that were not foreseeable and are beyond the Employee's control;

(b) The unforeseeable emergency event involves the Participant or beneficiary, the Participant's or beneficiary's spouse, or the Participant's or beneficiary's dependent (as defined in Code section 152, as permitted for §457(b) plans.

(c) The financial burden created must be the legal obligation of the Participant;

(d) All other financial sources, such as insurance payments and attempts to obtain loans, have been exhausted;

(e) All assets must be liquidated except where liquidation would itself cause severe financial hardship;

(f) The amount of the requested withdrawal is limited to the amount necessary to meet the financial emergency;

(g) Participant ceases all deferrals to the Plan for a period of six months from the date of the approved unforeseen emergency; and

(f) Great financial hardship will occur if the withdrawal is not permitted.

Examples of hardship circumstances include major property loss and catastrophic illness of spouse or dependents.

Withdrawals are not authorized for expenses related to the death or illness of any other family member, or for budgetable expenses such as automobile or college costs, a home down payment, or expenses relative to divorce proceedings.

Any remaining benefits shall be paid upon retirement, termination of employment, or death in accordance with this Article IV.

The decision of the Committee concerning Emergency Withdrawals shall be final as to all Participants.

The Committee may enter into agreements with participating political subdivision employers delegating to such employers the authority to establish a review and appeal process for participants who have been denied emergency distribution requests under this section.

#### **4.9 Rollover of Plan Distributions**

A Distributee may elect, in a manner consistent with Section 457 (e)(16) of the Code and at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a



Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than \$200 in a single calendar year. For purposes of applying this section 4.9, the following definitions shall apply:

**(a) Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a participating member's account to the credit of the Distributee except that an Eligible Rollover Distribution does not include:

- (i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his designated beneficiary, or for a specified period of 10 years or more;
- (ii) Any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (i) The portion of any distribution that is not includible in a Distributee's gross income; or
- (ii) any corrective distribution of excess contributions and any corrective distribution of excess aggregate contributions and income allowable to such corrective distributions;
- (iv) any unforeseeable emergency distribution under section 4.8.

**(b) Eligible Retirement Plan.** An Eligible Retirement Plan as described in Section 402(c)(8)(B) is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408 (b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code Section 457(e)(1)(A), an annuity contract described in Code Section 403(b) that accepts the Distributee's Eligible Rollover Distribution.

**ARTICLE V  
BENEFICIARY**

**5.1 Designation**

Each Participant has the right, by written notice filed with the Plan Provider to designate one or more beneficiaries to receive any benefits payable under this Plan in the event of the Participant's death prior to the complete distribution of benefits. The Participant accepts and acknowledges that he has the burden for executing and filing, with the Plan Provider, a proper beneficiary designation form.

The form for this purpose shall be provided by the Plan Provider. It is not binding on the Plan Provider until it is signed, filed with the Plan Provider by the Participant, and accepted by the Plan Provider.

If no such designation is in effect upon the Participant's death, or if no designated beneficiary survives the Participant, the beneficiary shall be the estate.



If no estate executor or administrator is appointed and qualified within 120 days after the Participant's death, the payment may be made first to a surviving spouse, second, to a surviving child or children, and third, to a surviving parent or parents.

**ARTICLE VI  
NON-ASSIGNABILITY**

**6.1 Non-Assignability**

Neither the Participant nor the Participant's beneficiary, nor any other designee, shall have any right to commute, sell, assign, pledge, hypothecate, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and nontransferable.

Except to the extent otherwise provided by law, no payments shall be subject to attachment, garnishment or execution, or transferable in the event of bankruptcy or insolvency.

**6.2 Domestic Relations Orders**

**(a) Allowance of Transfers:** To the extent required under final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, or child of the Participant. As permitted under Code Section 414(p)(11), the Plan shall recognize and give effect to domestic relations orders that have been approved by the Plan as such in accordance with Plan procedures. Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the spouse, former spouse, or child who shall be entitled to make investment selections with respect thereto in the same manner as the Participant.

**(b) Distribution and Tax Withholding:** Amounts segregated for the accounts of alternate payees pursuant to a Plan approved domestic relations order shall be available for immediate distribution to the alternate payee with the same distribution options as available to as other plan participants. The Alternate Payee will be responsible for tax withholdings and distributions will be includible in the recipient's gross income when paid.

**(c) Release from Liability to Participant:** The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse, or child pursuant to subsection (a). No such transfer shall be effectuated unless the Employer or Administrator has been provided with satisfactory evidence that the Employer and Administrator are released from any further claim by the Participant with respect to such amounts. The Participant shall be deemed to have released the Employer and Administrator from any claim with respect to such amounts, in any case in which (i) the Employer or Administrator has been served with legal process or otherwise

joined in a proceeding relating to such transfer, (ii) the Participant has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process in such action or by mail from the Employer or Administrator to the Participant's last known mailing address, and

(iii) the Participant fails to obtain an order of the court in the proceeding relieving the Employer or Administrator from the obligation to comply with the judgment, decree, or order.

(d) **Participation in Legal Proceedings:** The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in subsection (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Participant's spouse, former spouse, or child (including the legal representatives of the spouse, former spouse, or child), or to a court.

## ARTICLE VII

### PLAN TRANSFERS

#### 7.1 Plan Transfers

Code Sections 457, 401(a), 403(b), and IRAs and the applicable regulations permit transfers of Plan interests when the Participant changes employers.

#### 7.2 Transfers In

The full value of a Participation Account may be accepted from another Eligible Retirement maintained by another employer and credited to the Participant's Participation Account under this Plan, if:

- (a) The Participant has severed employment with that employer and has become an Employee;
- (b) The other employer's plan provides that such transfer can be made.

As it deems necessary, the Committee may require such documentation from the predecessor plan to effect the transfer, to confirm that such plan is an Eligible Retirement Plan within the meaning of Code Sections 457, 401(a), 403 (b), and IRAs and to assure that transfers are provided for under such plan.

The Committee may refuse to accept a transfer in the form of assets other than cash, unless the Employer agrees to hold such other assets under the Plan.

Any amounts transferred that had been deferred during prior calendar years will not be subject to current calendar year deferral limitations.

### 7.3 Transfers Out

The full value of a Participation Account may be transferred to another Eligible Retirement Plan maintained by another employer, if:

- (a) The Participant has severed employment with the Employer and become an employee of the other employer;
- (b) The other employer's plan provides that such transfer will be accepted; and
- (c) The Participant and the employer have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer.

As it deems necessary, the Committee may require such documentation from the other plan to affect the transfer, to confirm that such plan is an Eligible Retirement Plan within the meaning of Code Section 457 and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457, 401(a), 403(b), and IRAs and the applicable regulations.

### 7.4 Availability of Plan Amounts to Purchase Service Credits

Subject to rules established by the Committee and as permitted by Section 457(e)(17) of the Code, a Participant may elect to have all or any portion of the Participation Account paid via a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in Section 414(d) of the Code) for the purchase of permissive service credit (as defined in Section 415(n) of the Code) or for repayments under Section 415(k)(3) of the Code.

## ARTICLE VIII

### ADMINISTRATION AND ACCOUNTING

#### 8.1 Administration by Employer

This plan shall be administered by the Committee, which shall prescribe such forms, and adopt such rules and regulations as are necessary to carry out the purposes of the Plan. The Committee may employ investment counsel to provide advice concerning categories of investment, investment guidelines and investment policy, provided, however, that the advice or recommendations of any such investment counsel shall not be binding on the Committee, which shall make the final determination concerning investment categories, investment guidelines and policies.

The Committee may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Employer. The Administrator shall have the right to designate a Plan Coordinator or other party of its choice to perform such services under this agreement as may be mutually agreed to between the Administrator and the Plan Coordinator or other party. Notwithstanding any other provisions to the contrary, the Administrator agrees that it shall be solely

responsible to the Committee for any and all services performed by a subcontractor, assignee, or designee under this agreement.

### **8.2 Administrative Costs**

The Committee shall determine, in a manner deemed fair and equitable, the administrative costs associated with the withholding of Deferred Compensation amounts pursuant to this plan or in making investments or otherwise administering or implementing the Plan. The Committee may withhold or collect, or have withheld or collected such costs in such a manner as it deems equitable either (1) from the compensation deferred pursuant to the Plan, the income produced from the compensation deferred pursuant to the Plan, the income produced from any investment, whether or not augmented, or (2) from the organization receiving such investment where required by law to collect there from or, if not so required, where mutually satisfactory to such organization.

### **8.3 Paperless Administration**

To the extent permitted by law, regulation or other guidance from an appropriate regulatory agency, the Administrator, Trustee, Employer or any other party may provide any notice or disclosure, obtain any authorization or consent, or satisfy any other obligation under this plan through the use of media other than paper. Such alternative media may include but is not limited to, electronic or telephonic media.

## **ARTICLE IX**

### **AMENDMENTS**

#### **9.1 Right to Amend, Modify and Terminate**

The Committee may at any time modify or terminate the Plan by notifying Participants of such action. The Committee shall not have the right to reduce or affect the value of any Participant's Participation Account or any rights accrued under the Plan prior to modification or termination.

#### **9.2 Conformation**

The Committee shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code Sections 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Code Section 457, the Committee shall correct such inconsistency within the period provided in Code Section 457(b), and deemed inconsistent with Code Section 401(a), the Committee shall correct such inconsistency within the period provided.

#### **9.3 Plan Termination**

In the event of the termination of the Plan, distribution of benefits shall be made to Participants and beneficiaries pursuant to the distribution guidelines in Article IV or the transfer provisions of Article VII.

**ARTICLE X**  
**EXCLUSIVE BENEFIT**

**10.1 Exclusive Benefit**

All amounts of compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust or under custodial accounts and contracts described in Section 401(f) of the Code. Except as may otherwise be permitted or required by law, no assets or income of the Plan shall be used for, or diverted to, purposed other than for the exclusive purpose of providing benefits for Participants and their Beneficiaries or defraying reasonable expenses of administration of the Plan.

**10.2 Unclaimed Accounts**

As provided in Nevada Revised Statutes Chapter 120A, an account that remains unclaimed for three years after any benefit becomes payable or distributable to the Participant or Beneficiary shall be presumed abandoned and treated as provided in the Act. The Trustee's good faith efforts to comply with the Act shall be deemed consistent with the trust provisions in Article III of the Plan.

**ARTICLE XI**  
**MISCELLANEOUS**

**11.1 Retirement System Integration**

Benefits payable by, and deductions for Employee contributions to, any retirement system of the Employer shall be computed without reference to amounts deferred pursuant to this Plan.

**11.2 Employment**

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as herein provided; and, in no event, shall be terms or employment of any Employee be modified or in any way affected hereby.

**11.3 Successors and Assigns**

The Plan shall be binding upon and shall insure to the benefits of the Employer, its successors and assigns, all Participants and Beneficiaries and their heirs and legal representatives.

**11.4 Written Notice**

Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Committee shall be sent to the designated office of the Committee and, if directed to a

Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his last known address as it appears on the Committee record.

**11.5 Total Agreement**

This Plan and the Participation Agreement, and any subsequently adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.

**11.6 Gender**

As used herein the masculine shall include the neuter and the feminine where appropriate.

**11.7 Controlling Law**

This Plan is created and shall be construed, administered and interpreted in accordance with Section 457 of the Code and the regulations there under and under the laws of the State of Nevada as the same shall be at the time any dispute or issue is raised. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected.

IN WITNESS WHEREOF, the Employer has executed this Plan document this \_\_\_\_\_ day of \_\_\_\_\_.

NEVADA PUBLIC EMPLOYEES' DEFERRED COMPENSATION PROGRAM

By: \_\_\_\_\_ TARA HAGAN, EXECUTIVE OFFICER

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada  
Acting By and Through Its

STATE OF NEVADA  
EMPLOYEES' DEFERRED COMPENSATION COMMITTEE  
209 E. MUSSER STREET, #304  
CARSON CITY, NV 89701  
TELEPHONE: (775) 684-0273  
FAX: (775) 695-0275

and

THE HARTFORD FINANCIAL SERVICES GROUP, INC.  
JAMIE OHL, VICE PRESIDENT  
200 HOPMEADOW STREET  
SIMSBURY, CT 06089  
TELEPHONE: (860) 843-5802  
FAX: (860) 843-

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and  
WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;  
NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective from January 1, 2008 to December 31, 2012, unless sooner terminated by either party as specified in paragraph (10).
4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

- |               |  |
|---------------|--|
| ATTACHMENT A: | STATE SOLICITATION (RFP # DEF457K) (Incorporated by Reference) |
| ATTACHMENT B: | CONTRACTOR'S RESPONSE (Incorporated by Reference)              |
| ATTACHMENT C: | SCOPE OF WORK  |
| ATTACHMENT D: | INSURANCE ACORD  |

Approved 05/08/02  
Revised 01/04



6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at no cost to the State of Nevada. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a state claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a state claim and that this amount will be deducted from the state claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. State Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or



- v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
  - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
  - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
  - iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph (21).
11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.
12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.
13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
14. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.
15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with

respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	_____ <i>jo</i>
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	_____ <i>jo</i>
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	_____ <i>jo</i>
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	_____ <i>jo</i>
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	_____ <i>jo</i>
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	_____ <i>jo</i>
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	_____ <i>jo</i>

**16. INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

**Insurance Coverage:** The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

**Workers' Compensation and Employer's Liability Insurance**

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.  
If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.
- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed "Affidavit of Rejection of Coverage Under NRS 616B627 and NRS 617.210" form.

**Commercial General Liability Insurance**

- 1) Minimum Limits required:

<u>\$2,000,000</u>	General Aggregate
<u>\$1,000,000</u>	Products & Completed Operations Aggregate
<u>\$1,000,000</u>	Personal and Advertising Injury
<u>\$1,000,000</u>	Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

**Business Automobile Liability Insurance**

- 1) Minimum Limit required: \$1,000,000 Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).  
The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

**Professional Liability Insurance**

- 1) Minimum Limit required: \$5,000,000 Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

**Umbrella or Excess Liability Insurance**

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

**Commercial Crime Insurance**

Minimum Limit required: \$1,000,000 Per Loss for Employee Dishonesty  
This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

**Performance Security**

Amount required: \$waived

Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the State of Nevada, only.

- 1) The security shall be deposited with the contracting State agency no later than ten (10) working days following award of the Contract to Contractor.
- 2) Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

**General Requirements:**

Approved 05/08/02  
Revised 01/04

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, *The State of Nevada, its officers, employees and immune contractors* as defined in NRS41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown below.
- f. **Approved Insurer:** Each insurance policy shall be:
  - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
  - 2) Currently rated by A.M. Best as "A- VII" or better.

**Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per **General Requirements**, Subsection a above.
- 3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

**Review and Approval:** Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

**Mail all required insurance documents to the Contracting Agency identified on page one of the contract.**

**17. COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

**18. WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.



19. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. **ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. **FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. **WARRANTIES.**

a. **General Warranty.** Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century. Pursuant to NRS 41.0321, the State is immune from liability due to any failure of any incorrect date being produced, calculated or generated by a computer or other information system.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Jamie Ohl 10/24/2007 Vice President  
 Independent Contractor's Signature Date Independent Contractor's Title

Mary C. Keating 10/30/07 Comm. Member  
 Signature Date Title

Signature Date Title

Signature Date Title

[Signature]  
 Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On 11-13-07 (Date)

Kate S. Armstrong  
 Deputy Attorney General for Attorney General

On 10/30/07 (Date)

Approved 05/08/02  
 Revised 01/04

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada  
Acting By and Through Its

State of Nevada Deferred Compensation Committee  
209 E. Musser Street, Room 304  
Carson City, NV 89701

And

ING Life Insurance and Annuity Company  
One Orange Way  
Windsor, CT 06095-4774

RECEIVED

NOV 08 2007

DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE DIRECTOR  
BUDGET AND PLANNING DIVISION

NOV 20 AM 11:15

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and  
WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;  
NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective from 01 - 01 - 2008 subject to Board of Examiners' approval (anticipated to be \_\_\_\_\_) to 12-31-2012, unless sooner terminated by either party as specified in paragraph (10).
4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:
 

ATTACHMENT A:	STATE SOLICITATION (RFP # DEF 457) and ATTACHMENTS (incorporated by reference)
ATTACHMENT B:	CONTRACTOR'S RESPONSE (incorporated by reference)
ATTACHMENT C:	SCOPE OF WORK
ATTACHMENT D:	INSURANCE ACCORD
6. **CONSIDERATION.** The parties agree that Contractor will provide the services at no cost to State. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a

Approved 05/08/02  
Revised 01/04

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biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a state claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a state claim and that this amount will be deducted from the state claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. State Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of



the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or  
vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and term

negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	X
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	X
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	X
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	X
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	X
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	X
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	X

**16. INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

**Insurance Coverage:** The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

**Workers' Compensation and Employer's Liability Insurance**

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.  
If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.
- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed "Affidavit of Rejection of Coverage Under NRS 616B627 and NRS 617.210" form.

**Commercial General Liability Insurance**

- 1) Minimum Limits required:  

<u>\$2,000,000</u>	General Aggregate
<u>\$1,000,000</u>	Products & Completed Operations Aggregate
<u>\$1,000,000</u>	Personal and Advertising Injury
<u>\$1,000,000</u>	Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

**Business Automobile Liability Insurance**

- 1) Minimum Limit required: \$1,000,000 Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).  
The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

**Professional Liability Insurance**

- 1) Minimum Limit required: \$5,000,000 Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

**Umbrella or Excess Liability Insurance**

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

**Commercial Crime Insurance**

Minimum Limit required: \$to be provided in amendment 1 of RFP Per Loss for Employee Dishonesty  
This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

**Performance Security**

Amount required: \$waived

Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the State of Nevada, only.

- 1) The security shall be deposited with the contracting State agency no later than ten (10) working days following award of the Contract to Contractor.
- 2) Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

**General Requirements:**

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, *The State of Nevada, its officers, employees and immune contractors* as defined in NRS41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown below.
- f. **Approved Insurer:** Each insurance policy shall be:
  - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
  - 2) Currently rated by A.M. Best as "A- VII" or better.

**Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, Subsection a above.
- 3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

**Review and Approval:** Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

**Mail all required insurance documents to the Contracting Agency identified on page one of the contract.**

**17. COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

**18. WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.



19. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. **ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. **FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. **WARRANTIES.**

a. **General Warranty.** Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century. Pursuant to NRS 41.0321, the State is immune from liability due to any failure of any incorrect date being produced, calculated or generated by a computer or other information system.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

David D. Com...  
 Independent Contractor's Signature Date

President  
 Independent's Contractor's Title

Wayne Keating 11-2-07  
 Signature Date

Comm. Member  
 Title

Signature Date

Title

Signature Date

Title

[Signature]  
 Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:  
Cameron Vandenberg  
 Deputy Attorney General for Attorney General

On 11-13-07  
 (Date)

On 11/2/07  
 (Date)

Approved 05/08/02  
 Revised 01/04

COPY

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: April 26, 2010  
Clerk of the 9th Judicial District Court  
of the State of Nevada, in and for the County of Douglas.

By Carol Mullock Deputy