

**FISCAL YEAR 2014 RETENTION AGREEMENT  
THIRD PARTY COLLECTION VENDOR  
Awarded by Ohio Attorney General Mike DeWine**

This Retention Agreement for Third Party Collection Vendor (hereinafter “Retention Agreement” or “Agreement”) is entered into by and between the Ohio Attorney General and the undersigned Third Party Collection Vendor (“TPV”), individually referred to as the “Party,” collectively referred to as the “Parties.”

The Parties agree as follows:

**ARTICLE I NATURE OF RETENTION AGREEMENT**

The Attorney General represents the State of Ohio in the recovery of its delinquent debts. The State’s delinquent accounts are comprised of all types of debts owed to various state agencies, boards, departments, commissions, colleges, universities, retirement systems, and political subdivisions (collectively, the “State Clients”). The scope of the collection work for this Agreement may include any type of debt owed to the State Clients, with debtors located in all eighty-eight (88) Ohio counties and throughout the United States.

TPV shall be employed as an independent contractor to fulfill the terms of this Agreement. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a personal nature that the Attorney General is the sole judge of the adequacy of such services.

The Attorney General enters into this Agreement in reliance upon TPV’s representations that it has the necessary expertise and experience to perform its obligations hereunder, and TPV warrants that it does possess the necessary expertise and experience.

TPV shall perform the services to be rendered under this Agreement and the Attorney General shall not hire, supervise, or pay any assistants to TPV in its performance of services under this Agreement. The Attorney General shall not be required to provide any training to TPV to enable it to perform services required under this Agreement. However, if the Attorney General provides training, TPV shall be required to attend at its own cost.

The Attorney General and TPV agree that TPV shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service and office space. TPV will also be responsible for all licenses, permits, employees’ wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers’ Compensation and Unemployment Compensation coverage, if any.

While TPV shall be required to render services described hereunder for the Attorney General during the term of this Agreement, nothing herein shall be construed to imply, by reason of TPV’s engagement hereunder as an independent contractor, that the Attorney General shall have or may exercise any right of control over TPV with regard to the manner or method of TPV’s performance of services hereunder.

Except as expressly provided herein, neither Party shall have the right to bind or obligate the other Party in any manner without the other Party's prior written consent.

It is fully understood and agreed that TPV is an independent contractor and neither TPV nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the Attorney General or the State of Ohio.

## **ARTICLE II TERM**

The term of this Retention Agreement shall begin on July 1, 2013, and shall terminate on June 30, 2014, unless terminated by the Attorney General as set forth herein, or as a result of the completion of all work for the assignment ("Termination"). No services rendered by TPV after the date of Termination shall be authorized or payable without an additional agreement from the Attorney General.

## **ARTICLE III SERVICE**

### **Section 1. Scope of Work**

TPV, its officers and directors, and its employees shall provide any and all collection work assigned by the Attorney General. Only collection work is contemplated under this Agreement; no legal work is to be performed by TPV. Both Parties recognize that the appointment of TPV is personal in nature and does not extend to any entity that the TPV is associated with, a subsidiary of, or otherwise related to.

All of TPV's collector and call centers performing work under this Agreement must be located in the State of Ohio.

TPV shall at all times (during and subsequent to the term of this Agreement) limit the use of debtor information to the sole purpose of the collection of accounts by employees who are in a secure area. The staff members of TPV who handle the accounts must be dedicated exclusively to the work under this Agreement, and must be the only staff of TPV to have access to debtor data and information provided by the Attorney General. TPV shall make no private use of such information in any manner. Violation of this section may result in the termination of this Agreement and other legally authorized sanctions by the Attorney General.

### **Section 2. Delegation of Work**

Under no other circumstances may TPV subcontract, forward, assign, or otherwise delegate work assigned by the Attorney General to any other individual or entity. All work pursuant to this Agreement shall be conducted by employees of TPV.

### **Section 3. Claim Assignment**

For the purposes of this Retention Agreement, a claim or an account or a record is a debt due the State of Ohio or a political subdivision. Should TPV receive assignment of claims from the Attorney General, Collections Enforcement Section, such assignments will be transferred electronically and are subject to the provisions of this Retention Agreement.

Accounts will be assigned to the TPV at the discretion of the Attorney General. Assignment of accounts will be made based on account type (also known as product type). The specific percentage of the accounts of one or more account types allocated to the TPV will be determined at the discretion of the Attorney General. Individual accounts will be electronically assigned to TPV for collection. All assignments of accounts are subject to the terms and conditions of this Agreement.

The Attorney General may recall an account at any time for any reason. At the time of recall, all collection activity by TPV shall immediately cease. No reimbursements will be made by the Attorney General in the event of recall. However, TPV's commission may be paid, at the Attorney General's discretion, on payments received within ten (10) days of the recall. Recalled accounts may be assigned to another TPV.

A TPV that substantially increases the collections of its assigned claims, while maintaining quality customer service, may be eligible to have an increase in the number of claims assignments made by the Attorney General's Office. A TPV that is not successful may have a decrease in assignments or termination. TPV's inventory of claims may be increased or decreased at the sole discretion of the Attorney General's Office. TPV agrees to abide by all policies and procedures promulgated by the Attorney General relating to collection of claims.

#### **Section 4. Specific Performance Measures**

A personal performance review may be conducted on TPV at the discretion of the Attorney General. Performance reviews may include, but are not limited to, the following areas: collection ratios, performance measures based on historical averages and comparisons of new and old accounts and various account types, customer service complaints, compliance with Attorney General policies, reports, status updates, and interviews. The Attorney General's Office may communicate any additional specific performance review requirements.

If requested, TPV agrees to provide the Attorney General or his authorized agent access to all documents, papers, records, and/or computer searches involving the services to be performed under this Agreement, including all documents required by this Agreement.

#### **Section 5. Media Statements**

The Parties agree that neither TPV, nor any partner, associate, employee, or any other person assisting with the collection work contemplated by this Retention Agreement, shall publish any material, including online publications, or speak to or otherwise communicate with any representative of a television station, radio station, newspaper, magazine, website, or any other media outlet concerning the work outlined or contemplated by this Agreement without first obtaining approval of the Chief of the Collections Enforcement Section and/or the Director of Communications of the Attorney General's Office. TPV shall not speak on behalf of the Ohio Attorney General to any member of the news media.

#### **Section 6. Public Records Act/Confidentiality**

TPV shall describe and provide all material commissioned or gathered by TPV or in TPV's possession that fulfills an obligation of this Agreement, including names and addresses of potential

witnesses. All such material shall be considered property of the State of Ohio. TPV agrees to adhere to R.C. 149.43 and maintain all public records in accordance with state law.

TPV shall consult with and obtain the approval of the Chief of the Collections Enforcement Section before responding to any public records request. Moreover, TPV shall not disclose any information obtained in performing its services hereunder in violation of any state or federal law, including, but not limited to, the Family Educational Rights and Privacy Act (“FERPA”) and/or the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as the same may be amended or modified from time to time. TPV must also submit signed FERPA and HIPAA Acknowledgments, if applicable to the scope of appointment, to the Attorney General at the time of execution of this Agreement (copies attached to and incorporated herein).

TPV acknowledges its obligation to hold in confidence sensitive and confidential information provided by the Attorney General pursuant to this Agreement and will agree to take reasonable security measures. TPV shall not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the Attorney General. TPV shall instruct TPV’s employees in writing to use a high degree of care to keep confidential all information concerning the State of Ohio’s client data, its business, its financial affairs, the relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Attorney General. All provisions of this Agreement relating to “confidentiality” shall remain binding upon TPV at the expiration of this Agreement or in the event of termination. TPV and its employees must also submit a signed Confidentiality Agreement to the Attorney General at the time of execution of this Agreement (copy attached to and incorporated herein).

TPV must maintain and file with the Director of Special Counsel and Third Party Vendors in the Collections Enforcement Section a written policy and enforced practice for the safeguarding of debtor identities, including social security numbers, identification numbers, and other information that could be used to a debtor’s disadvantage. This policy must include secure destruction of data under supervision, as well as the enforced prohibition of the unauthorized acquisition or retention of information by support staff and personnel, including social security numbers. TPV must submit a copy of this policy to the Attorney General at the time of execution of this Agreement. TPV must also submit a signed Non-AGO Network Access User Agreement, Confidentiality Agreement (as required above), and other documents as deemed necessary by the Attorney General to safeguard the information under its guardianship at the time of execution of this Agreement (copies attached to and incorporated herein).

## **Section 7. Correspondence**

Any notice required under this Retention Agreement shall be made in writing and shall be accomplished by personal delivery or by United States Certified mail, return receipt requested, postage prepaid, addressed to the other Party. Such notice shall be addressed to the Section Chief of Collections Enforcement in the Attorney General’s Office and mailed to 150 E. Gay St., 21st Floor, Columbus, OH 43215 or such other address as it may hereafter designate in writing. Notice to TPV shall be sent to the person and at the address provided below by personal delivery or by United States Certified mail, return receipt requested, postage prepaid:

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip

## ARTICLE IV COMPENSATION

### Section 1. Limitations

TPV shall be compensated only for the satisfactory performance of services provided as set forth in the Retention Agreement. TPV shall be compensated only in accordance with the express written provisions of this Retention Agreement and shall not receive reimbursement for expenses incurred in the performance of TPV duties in accordance with the terms of this Retention Agreement.

TPV shall not be compensated by another party for services performed hereunder. TPV shall also not be compensated in excess of the amount expressed within this Retention Agreement.

### Section 2. Compensation Fund

TPV will be compensated for services rendered through payment of a fee from funds collected by TPV on a specific claim, in an amount approved by the Attorney General or his designee. All moneys collected or received by TPV relating to a claim shall be forwarded to the Attorney General's Office. Upon receipt of such funds, Attorney General's Office shall calculate the fee payment due TPV under this Agreement and shall remit the same to TPV. In no event shall TPV withhold or deduct its fee from funds received by it. Fee payment shall only be made by the Attorney General.

In accordance with R.C. 131.02 and/or other law, business rules of the Attorney General and applicable Service Level Agreements with State Clients, the fees paid to TPV pursuant to the formula set forth in the Retention Agreement may be assessed as collection costs to the amounts certified to the Attorney General for collection. Therefore, such fees will not be increased during the term of the Retention Agreement.

### Section 3. The Fee

TPV will be paid on a contingency fee basis on accounts assigned to TPV. The standard contingency fee for any Accounts assigned to TPV for delinquent debt collection will be twenty-one percent (21%), except for:

1. State funded university hospital receivables will pay a contingency fee of fourteen percent (14%).
2. Federal student loans will pay a contingency fee of eighteen percent (18%).

3. Distressed debt will pay a contingency fee of forty percent (40%).
4. TPV will receive a zero percent (0%) fee on any collections resulting from any Federal or State offset program, including unclaimed funds.

The Attorney General reserves the right to modify the standard contingency fee on accounts assigned to TPV by notifying TPV in writing of any change.

The Attorney General will determine the payment method and schedule for compensation distributed to TPV, and may transmit fee payments electronically. TPV agrees to submit current bank account information and any authorizations necessary to facilitate electronic payments. TPV shall submit any dispute over the amount of fees owed for collection of any account within two (2) years after the date of payment by the debtor, or the dispute shall be deemed to have been waived.

TPV shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement.

#### **Section 4. Payment Installment Plans**

If a payment plan, as defined by R.C. 131.02, has been established by TPV with a debtor, fees for TPV will be paid on each installment payment, so long as each payment is timely under the installment plan and the payment plan does not exceed five years in length. Failure to make a timely payment under any installment payment plan constitutes a breach by the debtor.

Further, no payment plan established by TPV shall exceed five years in length without prior written approval from the Chief of the Collections Enforcement Section. If the Retention Agreement is terminated or expires, TPV shall not receive a fee for collections received after the date of termination or the expiration of the Retention Agreement.

### **ARTICLE V OTHER TERMS AND CONDITIONS**

#### **Section 1. Counterparts**

This Retention Agreement may be executed in one or more counterparts, each of which shall be an original and all of which constitute one and the same instrument.

#### **Section 2. Severability of Terms and Conditions**

If any provision of this Retention Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed.

The validity, legality, and enforceability of all other provisions of this Retention Agreement shall not be affected or impaired unless such severance would cause this Retention Agreement to fail of its essential purpose.

#### **Section 3. Equal Opportunity**

In the hiring of employees for the performance of work under this Agreement, TPV agrees not to discriminate on the basis of race, color, religion, sex, age, disability, military status, national

origin, ancestry, sexual orientation or gender identity, characteristics or expression against any citizen of this state in the employment of a person qualified and available to perform the work to which this Retention Agreement relates.

TPV further agrees not to discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, military status, disability, national origin, ancestry, sexual orientation or gender identity, characteristics or expression.

R.C. 125.111 requires any company doing business with the State of Ohio to maintain a written affirmative action program addressing employment practices. The law further requires that this plan be filed annually with the Department of Administrative Services, Equal Opportunity Division. TPV represents that it has a written affirmative action program and has filed a description of the affirmative action plan and a progress report on its implementation with the Equal Opportunity Division of the Department of Administrative Services. Compliance, and the liability for non-compliance with R.C. 125.111(B), is the sole responsibility of TPV.

#### **Section 4. Entire Agreement/Integration**

The Request for Qualifications for Third Party Vendors, Fiscal Year 2014 (“RFQ”) and TPV’s RFQ Responses are hereby incorporated by reference into this Retention Agreement. This Retention Agreement, including exhibits and documents incorporated by reference, constitutes the entire understanding of the Parties. In the event of a conflict between the terms of the body of this Agreement and any exhibits or between the terms of this Agreement and the RFQ or TPV’s response to the RFQ, the body of this Agreement will control. Both Parties agree that there is no other understanding or agreement other than the terms expressly stated herein.

#### **Section 5. Amendment or Modification**

No amendment or modification of this Retention Agreement shall be effective against either Party unless such amendment or modification is set forth in writing and signed by both Parties.

#### **Section 6. Waiver of Terms and Conditions**

Failure to enforce or insist on compliance with any of the terms and conditions of this Retention Agreement by the Attorney General shall not constitute a waiver or relinquishment of any such term or condition of the Retention Agreement on the part of the Attorney General but the same shall remain at all times in full force and effect.

#### **Section 7. Venue, Jurisdiction and Choice of Law**

This Retention Agreement and the rights of the Parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Any action or proceeding arising from or concerning this Retention Agreement and/or performance hereunder shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Franklin County, Ohio. TPV hereby irrevocably consents to such jurisdiction and venue in Franklin County, Ohio.

## **Section 8. Termination**

### **A. Termination by the Parties**

The Attorney General reserves the right to modify or cancel this Retention Agreement and/or terminate the Retention Agreement at any time, in his sole discretion, and without cause or duty of explanation upon written notice to TPV. The Attorney General may terminate this Agreement for convenience or any reason including, but not limited to (1) default by TPV; (2) the lack of need for the services as specified under this Agreement; or (3) if the Attorney General deems termination to be in the best interest of the State. Default by the TPV is defined as the failure by TPV to specifically perform in accordance with the specifications, terms, and conditions of this Agreement.

Upon receipt of notice of suspension or termination, TPV shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the Attorney General, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting therefrom, and any other matters the Attorney General requires.

TPV may terminate the this Retention Agreement upon thirty (30) days written notice to the Director of Special Counsel and Third Party Vendors in the Collections Enforcement Section.

### **B. Compensation upon Termination**

In the event this Retention Agreement is terminated by either Party, or is not renewed upon the expiration of its term, TPV shall be compensated for claims collected and received prior to termination or non-renewal. TPV shall not be entitled to any fee for any collections made or received, or any payment made by a debtor, after termination or non-renewal even if the collection or payment is made pursuant to a payment plan established by TPV.

### **C. Transfer of Work**

If TPV is removed from any claim, case or matter, or if this Retention Agreement is terminated or is not renewed upon expiration, TPV shall deliver to the Attorney General all work products and documents which have been prepared by TPV in the course of providing services under this Agreement. All such materials shall become and will remain the property of the Attorney General, to be used in such manner and for such purpose as the attorney General may choose. TPV will cooperate with the Chief of the Collections Enforcement Section or other designee in effecting this transfer.

TPV agrees to waive any right to, and shall make no claim for, additional compensation against the Attorney General by reason of such suspension or termination.

TPV agrees to protect any State Client interests in any transfer of work. Final

payment to TPV may be withheld if TPV fails to transfer all files, documents, and materials when so requested by the Ohio Attorney General's Office.

### **Section 9. Campaign Finance Compliance**

TPV hereby certifies that neither TPV nor any of TPV's partners, officers, directors, shareholders, nor the spouse of any such person, has made contributions in excess of the limitations specified in R.C. 3517.13.

This Retention Agreement shall be immediately null and void and any amounts paid to TPV shall be fully recoverable by the State of Ohio if, on or after the date TPV enters into this Retention Agreement, any of the applicable parties listed above have made campaign contributions to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee in excess of the amounts specified in R.C. 3517.13.

TPV shall, at all times, have a completed Affidavit of Eligibility on file with the Ohio Attorney General's Office. Failure to provide a completed Affidavit of Eligibility may result in termination of the TPV appointment.

TPV shall, at all times, have a completed Form I-9, Employment Eligibility Verification on file with the Ohio Attorney General's Office, Director of Special Counsel and Third Party Vendors in the Collections Enforcement Section. Failure to provide a completed Form I-9, Employment Eligibility Verification may result in termination of the TPV appointment.

### **Section 10. Conflicts of Interest and Ethics Compliance**

TPV represents and warrants that it and its partners, associates, employees, and other persons engaged in the administration or performance of this Retention Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. TPV further represents and warrants that neither TPV, nor any of its partners, associates, employees, or other persons engaged in the administration or performance of this Retention Agreement, will do any act that is inconsistent with such laws.

TPV agrees to follow the Code of Ethics and Code of Operations promulgated by ACA International (The Association of Credit and Collection Professionals) available at <http://www.acainternational.org/about-ethicscode-of-conduct-12909.aspx>, and incorporated herein as if fully restated.

### **Section 11. Headings**

The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Retention Agreement or in any other way to affect the validity, construction, interpretation, or effect of any of the provisions of this Retention Agreement.

### **Section 12. Insurance**

TPV shall, at its own cost, procure in its name and continue in force at all times that this Agreement is in effect general liability insurance against any and all claims for injuries to persons or

damage to property occurring or arising out of TPV's obligations set forth herein. Such insurance shall at all times be in an amount not less than Five Hundred Thousand Dollars (\$500,000) on account of bodily injury to or death of one (1) person, and One Million Dollars (\$1,000,000) on account of bodily injuries or death of more than one person as a result of any one accident or disaster, and Two Hundred Fifty Thousand Dollars (\$250,000) for property damage in any one accident. Such liability insurance shall be written by a company or companies authorized to engage in the business of general liability insurance in the State of Ohio with an A.M. Best rating of at least "A" or be otherwise approved in writing by the Attorney General. Any insurance policy required hereunder shall include an endorsement naming the Attorney General and the State of Ohio as additional insureds. A copy of such endorsement and a certificate reflecting the continuing coverage of all such policies procured by TPV in compliance herewith shall be delivered to the Director of Special Counsel and Third Party Vendors in the Collections Enforcement Section prior to undertaking any representation under this Retention Agreement and for at least thirty (30) days prior to the expiration of any policies. Such insurance shall bear an endorsement stating that the insurer agrees to notify the Chief of the Collections Enforcement Section not less than thirty (30) days in advance of any proposed modification or cancellation of any such policy.

### **Section 13. Indemnification**

TPV agrees to indemnify and to hold the Attorney General and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Retention Agreement that are attributable to TPV's own actions or omissions or those of its officers, employees, subcontractors, agents, suppliers, third parties utilized by TPV, or joint ventures while acting under this Retention Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving collection activities. TPV shall bear all costs associated with defending the Attorney General and/or any State Client against any such claims.

### **Section 14. Fidelity Bond**

TPV shall maintain a fidelity bond in the amount of One Million Dollars (\$1,000,000) for the duration of this Agreement. Such bond shall serve to protect the Attorney General against any loss through failure of TPV, its officers, employees, subcontractors, agents, including third parties utilized by TPV or joint ventures, to perform in accordance with the terms and conditions of this Agreement, for any acts of theft, embezzlement, and/or lost funds, malfeasance, misfeasance, gross negligence and similar misconduct committed by TPV, its officers, employees, subcontractors or agents, including third parties utilized by TPV or joint ventures, and/or to reimburse the Attorney General for services performed in the event of default by TPV. If TPV forwards any account to any other party for support services, such party must be covered by TPV's bond. All bonds must be executed by a company authorized to do business in the State of Ohio. A copy of the bond must be furnished with receipts or other satisfactory evidence establishing the payment of premiums at the time of execution of this Agreement.

### **Section 15. Findings for Recovery**

TPV warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24. If the warranty is deemed to be false, this Agreement is void *ab initio*, and TPV may be required to immediately repay to the State any funds paid under this Retention Agreement.

## **Section 16. Drug Free Workplace**

TPV agrees to comply with all applicable federal, state, and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that any and all of its employees or permitted subcontractors engaged in the work being performed hereunder do not purchase, transfer, use, or possess illegal drugs or abuse prescription drugs or alcohol in any way.

## **Section 17. Accounting/Financial**

All payments collected by TPV shall be made payable to the Ohio Treasurer of State. **Restrictively endorsed payments and/or payments accompanied by documents that contain restrictive endorsement language shall be immediately forwarded to the Collections Enforcement Section at 150 E. Gay St., 21<sup>st</sup> Floor, Columbus, OH 43215.** All other payments received by TPV, including those made payable to TPV, shall be immediately forwarded to the Collections Enforcement Lockbox.

TPV shall keep all financial records and other documents related to this Retention Agreement in a manner consistent with generally accepted accounting principles and Attorney General policies. All records and related documents shall be filed in a manner so that they are easily accessed and located. TPV agrees to provide the Ohio Attorney General or authorized agent with full access to examine documents, papers, and records involving the services to be performed under this Retention Agreement.

The Attorney General's Office reserves the right to audit the financial and business records that are associated with the Attorney General's Office accounts and related cash receipts of TPV to assure that proper reporting and remittance are submitted to the Attorney General's Office. This audit may be performed by the Ohio Attorney General or authorized agent, internal audit staff, independent accountants, or the Ohio Auditor of State. The expense of such audit shall be at the cost of the Attorney General's Office unless the audit establishes grounds for termination of the contract. In such case, the costs of the audit shall be payable by TPV.

TPV shall make its books and records available for inspection and audit during the period covered by this Retention Agreement and until the expiration of two (2) years after final payment under the Retention Agreement. TPV will be responsible for costs incurred for storing and providing these records.

## **Section 18. Related Agreements**

The work contemplated in this Agreement is to be performed by TPV, who may subcontract without the Attorney General's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve either the type of work or services contemplated by this Agreement or the disclosure of confidential information, but which are required for its satisfactory completion. At the time of execution of this Agreement, TPV shall furnish to the Attorney General a list of any subcontractors performing work contemplated in this Agreement, their addresses, tax identification numbers, and the dollar amount of each subcontract.

TPV shall not enter into other subcontracts related to the work contemplated in this Agreement without prior written approval by the Attorney General. All work subcontracted shall be at TPV's expense.

TPV shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the Attorney General to terms inconsistent with, or at variance from, this Agreement.

TPV warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of the Attorney General, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.

### **Section 19. Constituent Complaints**

TPV must conduct business in a manner that supports the Ohio Attorney General's goal of fair and equitable treatment of debtors during the collection of debts. At a minimum, fair and equitable treatment means debt collection without harassment or verbal abuse of the debtor, or compromising the debtor's rights. The Attorney General expects TPV to provide services to the public in a manner that will preserve or enhance goodwill between the public and the State of Ohio.

**The Attorney General's Office has zero tolerance for collection actions or activities that demonstrate anything less than complete respect for the rights and reasonable expectations of the public.**

TPV shall file and maintain with the Director of Special Counsel and Third Party Vendors in the Collections Enforcement Section a written policy regarding customer service for his/her staff and personnel. An annual training session should be provided to his/her staff on customer service practices and any updated information regarding policy and procedures for the accounts assigned by the Attorney General's Office. TPV shall be capable of audiotaping all collection calls with debtors, and shall comply with any directives of the Attorney General regarding tape recording of debtor communications.

### **Section 20. Compliance with Law**

TPV agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. TPV affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the contract period TPV, for any reason, becomes disqualified from conducting business in the State of Ohio, TPV will immediately notify the Attorney General in writing and will immediately cease performance of contract activities. TPV accepts full responsibility for payment of all unemployment compensation insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all taxes or payroll deductions required for all employees engaged by TPV in the performance of the work authorized and assigned. TPV must furnish evidence of workers' compensation insurance coverage to the Director of Special Counsel and Third Party Vendors in the Collections Enforcement Section. In addition, TPV must comply with the same standards of behavior as set forth in the Truth in Lending Act, 15 USC 1601 et seq.; the Fair Credit Reporting Act, 15 USC 1681 et seq.; and the Fair Debt Collection Practices Act, 15 USC 1692 et seq.; and any and all ancillary or collateral laws, regulations or administrative laws that apply to the above. Failure to comply with this provision will result in sanctions allowed by law and in this Agreement.

Consistent with Article I of this Agreement, TPV agrees that no agency, employment, joint venture, or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Retention Agreement. TPV assumes all responsibility for any federal, state, municipal, or other tax liabilities, and insurance premiums which may accrue as a result of compensation received for services rendered hereunder.

## **Section 21. Technical Requirements**

TPV must maintain in good working order the type of equipment necessary for electronic information storage, including a separate server to store Attorney General records, and maintain security on this equipment, firewalls and security processes as required by the Attorney General's Office. TPV must maintain the ability to transmit and receive electronic files and reporting and utilize standard file formats as determined by the Attorney General's Office.

At its own expense, TPV shall provide all necessary computer equipment, including but not limited to CUBS software, scanners, terminals, printers, workstations, communication equipment, telephone recording equipment and telephone circuits needed to perform the services required by the Attorney General's Office under this Agreement and be responsible for all licensing fees, other software costs, and other expenses related to the requirements of the Attorney General's Office for the duration of this Agreement.

The Attorney General will provide adequate ports to allow access to its computer collection system. TPV will identify by named user how many ports are necessary to perform the terms, conditions and requirements of this Agreement.

TPV must own the following equipment and software for the duration of this Agreement:

1. Pentium Dual Core 2.8 GHz Processor or above;
2. 1GB RAM (when running more applications simultaneously, in addition to the Windows operating system and RPCS, more memory may be required);
3. CD-ROM drive- 1000 MB Ethernet Network Interface;
4. Windows compatible mouse, keyboard and monitor;
5. TCP/IP Network Protocol; and
6. Microsoft Windows 2000, 2003 or XP CU•EMULATE 3.0 from RevQ (v2.4i or higher acceptable).

TPV shall have secure access to the internet and must visit and use the Attorney General's Extranet daily in connection with the work assigned pursuant to this Retention Agreement. TPV must also access and update ClientView in the notes section of each account assigned to TPV and/or provide an electronic file updating the Attorney General when working an account assigned from the Attorney General. All actions performed by TPV must be documented on CUBS, the Attorney General collection system, and/or ClientView. TPV shall use Action Codes on ClientView, CUBS, and/or the Attorney General collection system.

TPV shall be responsible for printing and mailing all letters generated during the collection process.

## **Section 22. Certification of Funds**

It is expressly understood and agreed by the Parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either Party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio.

## **Section 23. Rights in Data and Copyrights/Public Use**

The Attorney General shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by TPV pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to TPV by the Attorney General shall be subject to copyright by TPV in the United States or any other country.

TPV agrees that all original works created under this Agreement shall be made freely available to the general public to the extent permitted or required by law until and unless specified otherwise by the Attorney General. Any requests received by TPV should be referred to the Attorney General.

## **Section 24. Successors and Assigns**

Neither this Agreement, nor any rights, duties, nor obligations hereunder, may be assigned or transferred in whole or in part by TPV, without the prior written consent of the Attorney General.

## **Section 25. Debarment**

TPV represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25. If this representation and warranty is found to be false, this Agreement is void *ab initio* and TPV shall immediately repay to the Attorney General any funds paid under this Agreement.

## **Section 26. Antitrust Assignment**

TPV assigns to the Attorney General all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

## **Section 27. Ohio Retirement System Retirant**

If TPV is a PERS retirant, as such term is defined by R.C. 145.38, TPV shall notify the Attorney General of such status in writing prior to the commencement of work under this Agreement. Notices pursuant to this Paragraph shall be sent to the Attorney General's Director of Human Resources by mail at 30 E. Broad Street, 16th Floor, Columbus, Ohio 43215, by fax at (614) 728-7582, or by email at [HR@OhioAttorneyGeneral.gov](mailto:HR@OhioAttorneyGeneral.gov). The Attorney General shall not be responsible for any changes to TPV's retirement benefits that may result from entering into this Agreement.

## ARTICLE VI SAFEGUARDING CONTRACT LANGUAGE

### Section 1. Performance

In performance of this Agreement, TPV, as a contractor of the Ohio Attorney General, agrees to comply with and assume responsibility for compliance by his/her employees with the following requirements:

1. All work will be performed under the supervision of TPV or TPV's responsible employees.
2. Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone other than the TPV or employee of the TPV is prohibited.
3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
4. No work involving returns and return information furnished under this Agreement will be subcontracted without prior written approval of the Attorney General and the Internal Revenue Service ("IRS").
5. TPV will maintain a list of employees authorized access. Such list will be provided to the Attorney General's Office and, upon request, to the IRS reviewing office.
6. Incident response policy and procedures must be developed, documented, disseminated, and updated as necessary to facilitate the implementing incident response security controls.
7. Audit and accountability policy and procedures must be developed, documented, disseminated, and updated as necessary to facilitate implementing audit and accountability security controls.
  - a. To support the audit of activities, all TPV must ensure that audit information is archived for six years.
  - b. The information system must protect audit information and audit tools from unauthorized access, modification, and deletion.
8. The Attorney General will have the right to void or terminate this Agreement if TPV fails to provide the safeguards described above, or any other safeguard required under *Publication 1075: Tax Information Security Guidelines For Federal, State and Local Agencies*).

## Section 2. Criminal/Civil Sanctions

1. Each employee of TPV to whom returns or return information is or may be disclosed shall be notified in writing by TPV that returns or return information disclosed to such TPV or employee can be used only for the purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as Five Thousand Dollars (\$5,000) or imprisonment for as long as five years, or both, together with the costs of prosecution. TPV shall also notify each such employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the TPV and employee in an amount not less than One Thousand Dollars (\$1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

2. Each employee of any TPV to whom returns or return information is or may be disclosed shall be notified in writing by such TPV that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as One Thousand Dollars (\$1,000) or imprisonment for as long as one year, or both, together with the costs of prosecution. TPV shall also notify each such employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the employee in an amount equal to the sum of the greater of One Thousand Dollars (\$1,000) for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

3. Additionally, it is incumbent upon TPV to inform its employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to TPV as a contractor of the Ohio Attorney General by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than Five Thousand Dollars (\$5,000).

4. Granting TPV access to Federal Tax Information ("FTI") must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. TPV must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the Attorney General's files for review. As part of the certification and at least annually afterwards, TPV and TPV's employees should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information*

and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 of *Publication 1075: Tax Information Security Guidelines For Federal, State and Local Agencies*.) For both the initial certification and the annual certification, TPV and TPV's employees should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **Section 3. Inspection**

TPV shall comply with the requirements of the IRS Publication 1075, including all requirements referencing or related to, record retention and audit requirements to safeguard FTT.

The IRS and the Attorney General's Office shall have the right to send their officers and employees into the offices and plants of TPV for inspection of the facilities and operations provided for the performance of any work under this Agreement. This will include alternate worksites where FTT is received, processed, stored, destroyed, or has been handled by any other means; this provision specifically includes private property held by TPV or its employees or subcontractors if it allows its employees to establish an alternate work site within their property. On the basis of such inspection, specific measures may be required in cases where TPV is found to be noncompliant with contract safeguards. On the basis of such inspection, specific measures may be required to remedy matters of non-compliance, in cases where the TPV is found to be noncompliant with Retention Agreement safeguards or measures as defined by the IRS Office of Safeguards or the Attorney General's Office.

A background check must be performed, as required by IRS Publication 1075, on each of TPV's employees or subcontractors that may be exposed to records provided by the Attorney General's Office. Results of the background checks shall be made available to the Attorney General and the IRS or their designees upon request.

TPV must provide staff, logs, records, systems access, and access to the facilities at its own expense to assist during each of the inspections/audits. Inspections/audits may be performed by the Attorney General's Office, the IRS or their designee at any time the TPV is in possession of FTT or during the subsequent years until all FTT has been returned or destroyed, the return or destruction have been reported to the Attorney General's Office, and the retention periods for these records as defined in IRS Publication 1075 have expired.

The undersigned represent they are authorized to enter into this Retention Agreement numbering eighteen (18) pages. The undersigned acknowledge they have read and understand all terms set forth herein. By affixing their signatures below, the Parties evidence their intent to be bound hereto.

**THE OHIO ATTORNEY GENERAL**

**THIRD PARTY VENDOR**

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