

## CONTRACT TERMS AND CONDITIONS

### STATE OF NEW MEXICO OFFICE OF THE STATE AUDITOR

#### CONTRACT WITH THE NETWORK INC. TO PROVIDE 24-HOUR HOTLINE & CASE MANAGEMENT/REPORTING MODULE

##### SERVICES CONTRACT No. 12-308-0000-00004

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Office of the State Auditor**, hereinafter referred to as (the "Agency") and **The Network Inc.**, hereinafter referred to as (the "Contractor"), and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

**A. Purpose**

This is a contract established between The Network Inc. (The Network) and the Office of the State Auditor (OSA), where The Network will provide an independent Fraud Hot Line Intake service and an integrated Case Management and Reporting Module that enables the OSA to establish, manage and track the status of all active financial fraud, waste and abuse cases falling under the purview of the OSA.

**B. The Contractor shall perform the following work:**

The Network will provide the OSA an independent 24-Hour Hotline intake service and an integrated Case Management Module that enables the OSA to establish, manage and track the status of all its active financial fraud, waste and abuse cases, reported anonymously or not and otherwise falling under the purview of the OSA. "24-Hour Hotline" means continuous 24-hour-a day, seven-days-a-week phone in capability, staffed with trained personnel provided by The Network as part of its hotline service—trained and otherwise skilled in conducting interviews, obtaining relevant information, and at the same time screening (filtering out) reports that do not otherwise fall under the purview of the OSA. This means as well that The Network will provide and maintain as an alternative to phone-in reporting, an interactive web facility accessible day or night via the Internet that provides similar data collection and report screening capabilities, albeit via the web.

The Network will ensure the intake function is integrated with The Network's case management and reporting module, and the case management and reporting module will, in turn, be used by the OSA to establish, manage and track the status of all active financial fraud, waste and abuse cases falling under the purview of the OSA.

With respect to the case management and reporting module The Network will ensure that the case management and reporting module supports real-time dynamic management of the OSA's active (open) cases, including: the ability for the OSA to create and attach notes to the file; attach documents; provide a history of case activity and related case access by individuals; utilize email notification to generate follow-up reminders and otherwise; and, provide the OSA the ability to generate reports based on any number of tracking and reporting elements, including incident type, agency/location, assigned investigator(s) and referral/collaborating agency(s), if any.

The Network will also ensure that the case management and reporting module enables the OSA to control the migration of cases from open, to inactive, to closed and archived status so as to ensure an effective audit trail for said cases at all times, and to avoid losing or otherwise deleting by accident any of the related case information captured and otherwise stored within said module.

Hotline Utilization Levels:

Currently, the OSA has approximately three hundred (300) active cases, most of which were reported through a variety of means over the course of several years. These active cases remain open pending further investigation and/or prosecution. The OSA does not currently utilize a hotline service for incident reporting, thus it does not have a reliable basis for projecting utilization levels for the hotline service.

Case Management Retention Needs & Utilization Levels:

The OSA anticipates that somewhere between two and five OSA investigators/auditor auditors will require case-specific access to The Network's Case Management & Reporting Module, along with one or two OSA managers require universal/administrative access. Additionally, the OSA does not anticipate having more than three hundred (300) to five hundred (500) active cases at any point in time, with an estimated eighty percent of these cases being cleared or otherwise closed/archived within two years of the initial intake. Cases remaining open beyond two years would generally be those still under investigation and/or prosecution, hence the need for cases to be kept open and accessible via The Network's Case Management & Reporting Module as long as required. The Network will ensure this can and will be the case.

**C. Services will be performed (AT)(WITHIN)(LOCATION)**

The Network will provide trained service provider personnel (space and equipment to be provided said personnel by The Network at location determined by The Network but not, however, located at the OSA) for the telephone intake portion of the hotline service, and the OSA will be able to utilize the service provider's software and related web module to support 24-four-hour-a-day, seven-days-a-week incident recording, updating and tracking, plus related the case management and reporting software.

#### **D. Performance Measures**

This is not a procurement of software or technology, but a procurement of services to staff the hotline intake function with personnel employed by The Network, and the license to utilize The Network's software and web (Internet) module for the purpose of recording the intake of all reports of financial fraud, waste and abuse falling within the purview of the OSA, along with case management and related reporting of the same. Upon implementation of these modules by The Network, including software implementation, related setup and training, the OSA will began utilization.

#### **2. Compensation and Billing**

The OSA will have access to:

Unlimited Utilization of Hotline Service  
Case Management & Reporting Module

The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed eleven thousand nine hundred eighty dollars and no/100 (\$11,980.00). This amount is a maximum and not a guarantee that the work assigned to Contractor under this Agreement to be performed shall equal the amount stated herein.

#### **3. Term**

This contract shall be for a term of five month beginning February 1, 2012 through June 30, 2012, as authorized by the OSA.

**THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GENERAL SERVICES DEPARTMENT.** This Agreement shall terminate on June 30, 2012 unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978.

#### **4. Termination.**

**A. Termination.** Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT."

**B. Termination Management.** Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of

work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

**5. Appropriations**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

**8. Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

**9. Release**

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

**11. Product of Service -- Copyright**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

**13. Amendment**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

**14. Merger**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded

from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

**19. Indemnification**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

**19.A Records and Financial Audit**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, and the Department of Finance and Administration. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

**20. Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**21. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**22. Authority**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the State Purchasing Agent below.**

By: \_\_\_\_\_  
Agency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Agency's Legal Counsel—Certifying legal sufficiency

Date: \_\_\_\_\_

By: *Larry W. Skeets*  
Contractor

Date: *Jan 31, 2012*

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 03-043892-00-6

By: \_\_\_\_\_  
Taxation and Revenue Department

Date: \_\_\_\_\_

This Agreement has been approved and accepted by the State Purchasing Agent:

By: \_\_\_\_\_  
State Purchasing Agent

Date: \_\_\_\_\_