

AGREEMENT NUMBER <b>5-11-99-01</b>
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME  
**Department of General Services**

CONTRACTOR'S NAME  
**The Affiliates of Enterprise Holdings, INC, "D/B/A ENTERPRISE RENT-A-CAR, NATIONAL, AND ALAMO**

2 The term of this Agreement is: January 1, 2011 through December 31, 2013  
Or upon DGS signature of approval, with three one-year options to extend

3. The maximum amount of this Agreement is: \$ -0-

4. This contract is to provide Commercial Car Rental services to State and local government agencies per RFP DGS OFAM CCR 2011 and contractor's response which are incorporated and made a part of this agreement by reference.

The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement.

This Award is:

- Exhibit A, Scope of Work (3 pages)
- Exhibit B, Rates and Payment Provisions (2 pages)
- Exhibit C, General Terms & Conditions GTC-610 (6/9/2010 - 7 Pg) <http://www.documents.dgs.ca.gov/ols/GTC-610.doc>
- Exhibit D, Contractors Certification Clause CCC-307 (3/28/07- 4Pg) [www.ols.dgs.ca.gov/Standard+Language/default.htm](http://www.ols.dgs.ca.gov/Standard+Language/default.htm)
- Exhibit E, Short Term CCR Cost Tables (1 page)
- Exhibit F, Long Term CCR Cost Tables (1 page)

RFP DGS OFAM CCR 2011 and the Contractor's response are incorporated and made a part of this agreement by reference. <http://www.pd.dgs.ca.gov/masters/RFPList.htm>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

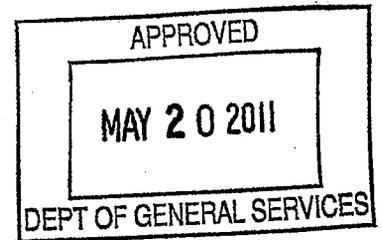
**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)  
The Affiliates of Enterprise Holdings, Inc  
BY (Authorized Signature) [Signature] DATE SIGNED (Do not type) 4/15/11  
PRINTED NAME AND TITLE OF PERSON SIGNING  
Mark I. Litow, Authorized Officer  
ADDRESS  
600 Corporate Park Dr., St. Louis, MO 63105

**STATE OF CALIFORNIA**

AGENCY NAME  
Department of General Services  
BY (Authorized Signature) [Signature] DATE SIGNED (Do not type) 5/20/11  
PRINTED NAME AND TITLE OF PERSON SIGNING  
Jim Butler, Deputy Director  
ADDRESS  
707 Third Street, 2<sup>nd</sup> Floor  
West Sacramento, CA 95605--2811

California Department of General Services  
Use Only



[Signature]

Exempt

STATE OF CALIFORNIA  
STANDARD AGREEMENT  
STD 213 (Rev 06/03)

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Mark I. Litow, Authorized Officer

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600 Corporate Park Dr. St. Louis, MO 63105

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AGENCY NAME

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Jim Butler, Deputy Director

ADDRESS

707 Third Street, 2<sup>nd</sup> Floor  
West Sacramento, CA 95605-2811

California Department of General Services  
Use Only

Exempt

The DGS PD, on behalf of the OFAM STP is procuring services for rental vehicles used by employees of the State and all optional users who travel on official State business, in a continued effort to provide consistency, accountability and transparency with State travel expenditures.

The State and The Entities of Enterprise Holdings, Inc, listed on attached schedule 1 (hereinafter referred to as the "Contractor"), hereby agree that the Contractor will provide the State with rental car services in accordance with the terms and conditions of this agreement.

The Contractor agrees that the terms and conditions set forth herein take precedence over any contrary policies and provisions of any Contractor rental document that the State of California employee signs when renting a vehicle. Representations by, and obligations of, the Contractor, hereunder are also representations by, and obligations of, Contractor's participation franchisees and subcontractors.

### 1. AGREEMENT

- A. The Contractor agrees to provide the State employees short term/long term vehicle CCR and services for official State business.
- B. Participating Locations, hours of operation and by-pass availability are identified in Attachment 3. The minimum hours of operation within the scope of this contract shall be consistent with airport hours at those locations and consistent with business hours at all other locations.
- C. This Agreement cannot be considered binding on either party until approved by DGS/PD.
- D. The rates specified in Exhibit F and Exhibit G will stay in effect for the initial 2 year contract term; however, contractor may request a price increase for contract extensions in accordance with the following procedure:

The State may authorize price increases should the State decide to extend the contracts. The price increase shall in no case exceed the Consumer Price Index (CPI) for the previous calendar year. A written request for the cost increases must be submitted to the DGS/PD Administration at least ninety (90) days prior to the effective date. The Contractor shall include in the written request full justification for the price increase. The CPI will be calculated according to the Consumer Annual Average for California which Contractor may find via the State of California, Department of Finance, Economic Research Section, Sacramento, California, telephone number (916) 322-2263.

### 2. TERMS

- A. The initial term agreement will be for two (2) years January 1, 2011 through December 31, 2012. The State reserves the right to extend the contract term for three (3) one-year terms at the base rates including CPI adjustment if applicable. The State shall endeavor to give notice of its intention to extend the contract term at least one hundred and twenty (120) days before expiration of the current term.

### 3. PERFORMANCE

- A. Performance shall start not later than five (5) business days, or on the express date set by the DGS and the Contractor, after all approvals have been obtained and the agreement is fully executed. Should the Contractor fail to commence work at the agreed upon time, the DGS, upon five (5) days written notice to the Contractor, reserves the right to terminate the agreement. In addition, the Contractor shall be liable to the State for the difference between its contracted bid price and the actual cost of performing the work by another contractor.

## RFP DGS OFAM CCR 2011

- B. Contractor will identify the name, business address and portion of work to be completed of each subcontractor who performs work to this contract.
- C. All performance under the agreement shall be completed on or before the termination date of the agreement.
- D. The contractor will provide a 100% of the vehicle requests and perform per contractual agreement. In no case should a government employee utilizing this contract be turned away. The State will periodically review reports to determine if the vendor is in compliance. The STP Administrator and Statewide Travel Manager will direct matters of serious concern to the Contractor's appropriate headquarters personnel.
- E. Full compliance with the terms of this Agreement is required of the Contractor and its participating locations. Any material deviation from standard rental car practices, or from the terms of this Agreement, may constitute good cause for an individual rental location to be placed in an immediate nonuse status until such time as the State of California determines that proper remedial measures have been taken (or implemented if that's preferred). Serious violations on a system-wide basis may justify disqualification of the Contractor from further State of California business. If the Contractor is disqualified, this Agreement will be immediately terminated.
- F. In the event that the Contractor is determined to be non-compliant by the State, the State will have the option to add or change vendors without a bid process and award based on the bids submitted through the RFP.

#### 4. SERVICE

- A. The Contractor will provide all necessary automotive and required services under this contract.
- B. At the completion of each service, the Contractor will provide Receipt of services that will contain all charges listed, identifying the base rate, fuel and/or any excess charges in addition to the charges for the vehicle, The receipt should also contain the renter's name and information provided prior to the rental. Should a credit be issued, the Contractor will provide receipt reflecting correction.
- C. The State does not guarantee the amount of work or services that may be requested from the Contractor.

RATE AND PAYMENT PROVISIONSEXHIBIT B

- A. **RATES** – Rates will include unlimited mileage provided the car is returned to the renting location or other drop point authorized by the Contractor at the time of pick up. Rates quoted will not be subject to blackout dates, and do not require advance reservations or a minimum rental period. If the Contractor provides a vehicle not included in Exhibit F and G the terms and conditions of this Agreement will nevertheless apply.

Short Term Rates

1. The daily, weekly, and maximum cap rates, (as applicable), set forth in Exhibit F.
2. The renter must return the vehicle with the same level of fuel that the vehicle had when it was picked up, or the company may charge market fuel prices, for vehicle refueling without requiring pre-payment.
3. Maximum Cap Rates (MCR) offered includes the base rate, all fee's, all charges, in addition to airport access fees, vehicle license fees and, State, City and County or local surcharges that apply to the CCR industry as a whole and identified by airport. Sales tax and refueling charges will not be included in the rate. MCR should be provided at the top 14 airports stated in Section A.3.a., based on the volume data provided in this RFP and will be evaluated based on availability provided by the contractor.

MCR – includes the base rate and all fees listed below:

- Vehicle Licensing Recovery Fee
- Concession Recoup Fee
- Tourism Fee
- Transportation Fee
- Other Fees where applicable\*

\* Other fees that are applicable are to be noted and attached to the bid sheet. (See Exhibit F & G)

\* Other fees and surcharges are to be included in the MCR provided. (See Exhibit F & G)

Long Term Rates

1. For the Long-term (thirty days or more) daily, weekly and monthly base rates shall apply so long as the rental period is at least 30 days, and after the initial 30 days, the rental vehicle will incur charges based on the daily, weekly, or monthly rates provided on Exhibit G. After which, the vehicle may be returned without penalty.
2. Long Term rentals, the renter must return the vehicle with the same level of fuel that the vehicle had when it was picked up, or the company may charge market fuel prices, for vehicle refueling without requiring pre-payment.

Global Distribution System

Submitted rates will be entered into the Global Distribution System (GDS) by the Contractor and be designated as the **CALIFORNIA STATE CONTRACT RATE**. The State of California will publish rates described in Exhibits F and G (to the extent possible) changes thereto in a Travel Bulletin or comparable document. **THE APPLICABLE BASE RATE SHALL BE QUOTED TO THE STATE TRAVELER AT THE TIME OF RESERVATION.**

All car rental rates must be accessible in the Global Distribution System (GDS) and/or through a Department intranet site. Contractor will not charge the State more than the contract rates set forth in Exhibits F and G.

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Note: Rates quoted in Exhibit F and Exhibit G must be available at all California, Domestic and International locations. Bidders shall provide a separate Attachment 3 listing for each California, Domestic and International participating locations.

### B. PAYMENT

Payment by the State employee may be made with the **American Express Government Charge Card**, or the **American Express Car Rental Business Travel Account (CRBTA)**. Acceptance of an **American Express Government Charge Card** or the **CRBTA** is mandatory. Cash, personal checks and personal credit cards are not authorized forms of payment for the State of California contract CCR rates.

AMERICAN EXPRESS CAR RENTAL BUSINESS TRAVEL ACCOUNT (CRBTA) CHARGES AND BILLING: The CRBTA is controlled by the Contractor. The reservation will be made through the current state travel agency, Cal-Travel Store utilizing an identification number issued by the car rental contractor for each department, or optional user. This may include but will not be limited to, billing numbers that identify the traveler, the department, the cost center, the State rate, and the proper insurance coverage. There are no actual cards. Upon completion of the reservation, the Car Rental Contractor will submit the transaction to American Express for payment. The State department will receive a consolidated billing statement from American Express reflecting charges through the 25<sup>th</sup> of the month. Detailed billing will come directly from the car rental company, in an excel spreadsheet or another optional useful format, providing the detail, including cost center information, charges, and specific needs requested by the department. The department will pay American Express directly.

Pre-charging credit cards with the estimated amount of the rental and/or making changes to the method of payment) when the car is returned is prohibited.

Should the travel payment vendor change before the end of this CCR contract cycle, the STP will contact each Contractor to provide further processing directions. The Contractor will ensure that all locations are notified of the changes.

BILLING TO INDIVIDUAL DEPARTMENTS: THE CONTRACTOR WILL NOT BILL THE DGS, OFAM FOR VEHICLES RENTED BY EMPLOYEES OF OTHER OFFICES AND DEPARTMENTS. The contractor must send invoices to the employee's department or office address. Do not send invoices to the OFAM address located at 1700 National Drive. The Contractor shall provide the State a single address for the remittance of all payments from this contract.

OTHER FORMS OF PAYMENT: NO OTHER FORM OF PAYMENT WILL BE AUTHORIZED FOR THESE STATE CONTRACTED RATES FOR STATE EMPLOYEES. If the Contractor provides contracted rates under another form of payment for optional users (see Section A.5.b. "optional users" - definition), the Contractor will be required to include this data in all reports requested, for the term of the contract, and include this volume in the revenue share provided to STP.

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below:

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**GENERAL TERMS AND CONDITIONS****EXHIBIT C**

The State does not accept alternate contract language from a Bidder. A bid with such language will be considered a counter proposal and will be rejected. The State's General Terms and Conditions (GTC 610) are not negotiable. The GTC 610 may be viewed at Internet site:

<http://www.documents.dgs.ca.gov/ols/GTC-610.doc>

**ADDITIONAL TERMS AND CONDITIONS****1. STANDARD CONDITIONS OF SERVICE**

- A. The Contractor shall have the charge, care, and sole responsibility of the work and shall bear the risk of injury or damage to any part thereof by the action of the elements or any other cause whether arising from execution or non-execution of the work.
- B. The Contractor shall bear all expenses to restore damages occasioned by any of the above or actions resulting from the injuries or damage sustained or arising in the construction of this work or the consequences thereof. The State of California may retain as much of the money due the Contractor as shall be considered necessary until final disposition has been made of such suits or claims for damages.
- C. The Contractor shall give his/her personal supervision to the work, or employ a competent representative satisfactory to the State of California who shall at all times be present at the site of the work while work is in progress, with authority to act for him/her. Whenever the Contractor is not present on any part of the work where it may be desired to give directions or orders, they will be given by an authorized employee of the State of California. Such orders shall be received and obeyed by the Contractor's representative who may have charge of the particular work in reference to which the orders are given.
- D. The Contractor shall so conduct his/her operations as to offer the least possible obstruction and inconvenience to the public, and he/she shall have under construction no greater amount of work that he/she can prosecute properly with due regard to the rights of the public. Any person the State may deem incompetent or disorderly shall be promptly dismissed and not reinstated.
- F. It is unlawful for a contractor to assist, promote, or deter union organizing by employees who are performing work on a service contract for the State or a State agency. This action is subject to fines in accordance with Government Code GC§16645.

**2. SEVERABILITY**

If any provision of this agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. Headings are used for convenience of reference only and in no way define, limit, construe or describe the scope or extent of any section, or in any way affect this Agreement.

**3. RIGHT TO TERMINATE**

The State reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. The agreement can be immediately terminated for cause. The term "for cause" shall mean that the

## RFP DGS OFAM CCR 2011

Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

### 4. INSURANCE

A. THIRD PARTY LIABILITY INSURANCE COVERAGE AND INDEMNIFICATION: Notwithstanding the provisions of any Contractor rental vehicle agreement executed by the State employee, the Contractor will maintain in force, at its sole cost, insurance coverage which will indemnify, defend and otherwise protect the State of California and State employees against liability for personal injury, death, and property damage arising from the use of the vehicle, EXCEPT when the loss or damage is caused by one or more of the following:

- 1) Operation of the vehicle by a driver who contributed to the accident while (and has been adjudged by the courts to have been) under the influence of alcohol (in excess of the legal limits) or any illegal non-prescription drug.
- 2) Operation or use of the vehicle for any intentionally illegal purposes.

The limit of such liability shall be \$250,000 (depending on bid submission scenario), per occurrence for bodily injury and property damage combined. The conditions, restrictions and exclusions of the applicable insurance for any rental shall not be less favorable to the State of California and State employees than the coverage afforded under standard automobile liability policies. When more favorable insurance terms are required under applicable state or foreign country law, such terms will apply to the rental. Standard coverage will include mandatory no-fault benefits where required by law. The Contractor warrants that, to the extent permitted by law, the liability and property damage coverage provided are primary in all respects to other sources of compensation, including claims statutes or insurance available to the State of California, renter, or additional authorized driver. Proof of such insurance shall be provided to the State of California. Failure to maintain this required insurance will be grounds for termination of this agreement by the State.

B. CERTIFICATE OF INSURANCE: The Contractor shall provide a Certificate of Insurance (COI) in the amount of not less than \$250,000 per occurrence for bodily injury and property damage combined, Insurance carrier must be licensed to issue policies in California. The COI shall be named Attachment 5 and shall be submitted within Envelope No. 1, of the bidder's proposal package.

The COI must include the following provisions in their entirety:

- 1) This insurance will not be cancelled, non-renewed, or reduced in limits without thirty (30) days prior written notice to the State; and
- 2) The State of California, its officers, agents, employees and servants are included as additional insured; but only insofar as the operations under this contract are concerned.
- 3) The Certificate Holder shall be:  
State of California  
Department of General Services, OFAM  
1700 National Drive  
Sacramento, CA 95834

The Contractor shall be responsible for the timely submission of its COI; in addition, such documentation is needed to establish to the State's satisfaction that Contractor's insurance fully covers the operation of all participating franchisees and subcontractors.

## RFP DGS OFAM CCR 2011

In the event said insurance coverage expires at any time or times during the term of this contract, the Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new COI evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one (1) year.

In the event the Contractor fails to keep insurance coverage in effect at all times as herein provided, the State may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.

**ONLY COMMERCIAL INSURANCE WILL SATISFY THESE PROVISIONS REGARDING AUTOMOBILE LIABILITY. NO SELF INSURANCE WILL BE ACCEPTED.**

### C. Workers' Compensation

Contractor certifies: "I am aware of the provision of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation benefits or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performing of the work of this contract."

Contractor will carry statutorily required benefits and will include \$1,000,000 limit of liability on employer's liability. Said policy shall contain a waiver of subrogation in favor of the State, which shall be provide together with a certificate of insurance.

The Contractor will be required to secure the payment of compensation to his/her employees in accordance with the provisions of Labor Code Section 3700.

### 5. ALTERNATIVE DISPUTE RESOLUTION

In the event a dispute arises with respect to the interpretation of, performance of, or the relationship created by, all or any part of this Agreement, the parties shall attempt in good faith to resolve the dispute. If such efforts prove unsuccessful, each party agrees to consider the use of mediation, mini-trial, arbitration or other alternative dispute resolution techniques prior to resorting to litigation. If the parties utilize mediation, mini-trial, arbitration or other alternative dispute resolution techniques, each party agrees that no award or decision resulting there from shall include punitive damages.

### 6. RESOLUTION OF CONTRACT DISPUTES

In the event of a dispute, Contractor will attempt resolution with the State's Contract Administrator and Contract Analyst with a written explanation of the situation. If no resolution is found, Contractor shall file a "Notice of Dispute" with the DGS, OFAM Office Chief within 10 days of the failed resolution at the following addresses:

Department of General Services, OFAM  
1700 National Drive  
Sacramento, CA 95834  
Attn: Office Chief

Within ten (10) days, the Office Chief shall meet with the Contractor and Project Manager for purposes of resolving the dispute. The decision of the Office Chief shall be final.

In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

7. AGENCY LIABILITY

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

8. CONFLICT OF INTEREST

- A. A firm will not be awarded a contract if the financial interests are held by a current officer or employee of the State. Additionally, a contract will not be awarded to an officer or employee of the State as an independent contractor to provide goods and service. Likewise, the contracting agency officials and employees shall also avoid actions resulting in or creating an appearance of:
1. Using an official position for private gain;
  2. Giving preferential treatment to any particular person;
  3. Losing independence or impartiality;
  4. Making a decision outside official channels; and,
  5. Affecting adversely the confidence of the public or local officials in the integrity of the program.
- B. Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the 12-month period prior to his or her separation from State service.

9. POTENTIAL SUBCONTRACTORS

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.

10. ANTITRUST

The following provisions of Government Code Section 4552, 4553 and 4554 shall be applicable to the Contractor.

- 1.) Contractor agrees to assign to the purchasing body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.c. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. See Government Code Section 4552.

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- 2.) If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. See Government Code Section 4553.
- 3.) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured, thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

### **11. PROMPT PAYMENT ACT**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927, Prompt Payment Act.

This contract is subject to any additional restrictions, limitations or conditions enacted by the Legislature that may affect the provisions and terms of this contract in any manner.