



State of Minnesota Contract

[remove consecutive zeroes in front of numbers] SWIFT Contract No.:

Instructions: Instructions for completing this form are in **red italics**. Fill in every blank and **delete all instructions** before sending this to the Contractor. Include an encumbrance worksheet in order to assist with encumbering the money for this Contract.

This Contract is between the State of Minnesota, acting through its **Example: “Commissioner of [insert name of agency or board]” or “Director of [insert name]”** (“State”) and [Contractor] whose designated business address is [Contractor’s business address] (“Contractor”).

Recitals

1. Under Minn. Stat. § 15.061 and other applicable law *[Insert additional statutory authorization if necessary]* the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of *[Add brief narrative of the purpose of the Contract]*.

Contract

1. Term of Contract

- 1.1 Effective date: *[Spell out full date (e.g., April 1, 2019)]*, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin the work.
- 1.2 Expiration date: *[Spell out full date (e.g., March 31, 2012)]*, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The contract may be extended for up to an additional *[##]* months through a duly executed amendment.
- 1.3 Survival of terms: The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that states it shall survive, shall survive.

2. Contractor’s duties

The Contractor represents that it is duly qualified and agrees to perform all duties described in this Contract to the satisfaction of the State.

The Contractor, who is not a State employee, will:

[Provide sufficient detail in the duties so that you can determine whether to approve the goods or services or hold the Contractor accountable for this work. Do this by either: 1) listing the Contractor’s duties, deliverables, and completion dates with precise detail here, or 2) using an exhibit that contains the precise duties, specifications, and deliverables. 3) attaching the Contractor’s proposal is not the preferred way of incorporating the Contractor’s scope of work into the

Contract; however, when it is necessary, be sure to delete all problematic/illegal contract clauses from the proposal then add the following clause to this Contract section, "no terms or conditions of the Contractor's proposal will be construed to modify, diminish, or derogate the terms and conditions of this Contract."

3. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

4. Consideration and payment

4.1 Consideration. The State will pay for performance by the Contractor under this Contract as follows:

4.1.1 Compensation. The Contractor will be paid *[Explain how the Contractor will be paid]*.

Examples: "in accordance with the breakdown of costs as set forth in Exhibit D" Or "Following acceptance of the deliverables described below. "Note: caution must be exercised if payment by the hour is utilized. If deliverables can be succinctly defined, it is generally preferable to structure payment based on the successful completion and acceptance of specific tasks or deliverables.

4.1.2 Total obligation. *[Remove for Acquisitions master contracts unless the solicitation or contract requires a limit.]* The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$ *[##]*.

4.2 Payment.

4.2.1 Invoices. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the goods received or services actually performed, and the State's Authorized Representative accepts the invoiced goods or services. Invoices must be submitted timely and according to the following schedule:

[Example: "upon completion of the services," or if there are specific deliverables, list how much will be paid for each deliverable. The State does not pay merely for the passage of time.]

4.2.2 Retainage. Under Minn. Stat. § 16C.08, subd. 2 (10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.

4.2.3 Conditions of payment. All services provided by the Contractor under this Contract must be performed to the State's satisfaction and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

5. Authorized Representative

The State's Authorized Representative is *[name, title, address, telephone number]*, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is *[name, title]* at the following business address and telephone number: *[insert business address and telephone number]*, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

6. Exhibits

The following documents are attached and incorporated into this contract:

- Exhibit A: Contract Terms
- Exhibit B: Insurance Requirements
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Pricing
- Exhibit E: *[optional, if needed]*

1. State Encumbrance Verification

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Print name: _____
Signature: _____
Title: _____ Date: _____
SWIFT Contract No.: _____

2. Contractor

The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: _____
Signature: _____
Title: _____ Date: _____

3. State Agency

With delegated authority

Print name: _____
Signature: _____
Title: _____ Date: _____

4. Commissioner of Administration

As delegated to The Office of State Procurement

Print name: _____
Signature: _____
Title: _____ Date: _____

Distribution:

- Agency
- Contractor
- State's Authorized Representative – photo copy

Exhibit A: Contract Terms

1. Prompt Payment and Invoicing.

1.1 Prompt Payment. The State will pay pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.

The payment for each order will only be made for goods received or services actually performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Contract and the ordering document.

1.2 Invoicing. The invoice must be in the same format as the sample invoice form submitted with the solicitation response and approved as an attachment with the Contract, unless an alternative format is approved in writing by the Contract Administrator. Each invoice should at a minimum include:

- a. Customer name
- b. State Contract number field
- c. Service description
- d. Explanation of work performed per charge indicated on the invoice

2. Assignment, Amendments, Waiver, and Contract Complete.

2.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors.

2.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.

2.3 Waiver. If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

2.4 Contract Complete. This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

3. Termination.

3.1 Termination by the State. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.

3.2 Termination for Default. If the Contractor fails to perform according to the contract terms and conditions, the State is authorized to immediately cancel the Contract or purchase order, or any portion of it, and may obtain replacement goods or services and charge the difference of costs to the defaulting Contractor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contractor may be removed from the vendors list, suspended or debarred from receiving a Contract for failure to comply with terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.

3.3 Termination for Insufficient Funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that dedicated funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

4. Force Majeure.

Neither party shall be responsible to the other or considered in default of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

5. Indemnification.

In the performance of this Contract by Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law, the Contractor must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Contractor's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this Contract.

6. Governing Law, Jurisdiction, and Venue.

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

7. *[optional – only if included in RFP – and requires OSP approval]* Foreign Outsourcing of Work Prohibited.

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by all subcontractors.

8. Data Disclosure.

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

9. Government Data Practices.

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

10. Intellectual Property Rights.

10.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

10.1.1 "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract.

10.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

10.1.3 "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes Documents.

10.2 Ownership. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

10.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor's Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

10.4 Obligations.

10.4.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will

immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

10.4.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Contractor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities.

10.4.3 Indemnification. Notwithstanding any other indemnification obligations set forth herein, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. Copyright.

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

12. Survivability of Orders. [use for PT master contracts]

In the event the term of any order or Professional/Technical Services work order ("order") placed under this Contract extends past the termination or expiration of this Contract, the terms and conditions of this Contract shall remain in full force and effect as it applies to such order and will continue in effect for such order until the term of that order expires or the order is cancelled or terminated in accordance with the terms of this Contract. No new orders may be issued after the termination or expiration of the Contract.

13. Order of Precedence.

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

14. State Audits.

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

15. Usage Reports. [For PT Master Contracts only.]

Contractor is required to furnish Contract usage data (usage reports) to the Contract Administrator at the following email address: osp.usagereports@state.mn.us. Contract usage reports must consist of the total dollars spent by the State and other entities, broken down into two categories: State agencies and CPV members. The reporting frequency is

at a minimum annually, or as otherwise requested. A final usage report is required at the expiration or termination of the Contract. Failure to provide usage reports may result in contract cancellation. This term survives the expiration or termination of the Contract.

16. [Delete if not applicable] Diverse Spend Reporting.

If the total value of your Contract may exceed \$500,000, including all extension options, you must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract compared to your company's overall revenue). When this applies, you will be set up in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the contract is in effect.

17. Insurance. [Instructional note: If no insurance, leave clause and replace all insurance requirements on Ex. B, with "no insurance required" language.]

Contractor must comply with all insurance requirements specified in Exhibit B of the Contract. Prior to execution of the Contract, amendment, or assignment agreement, the State must have a current copy of the Contractor's Certificate of Insurance that meets the Contract insurance requirements.

18. Publicity and Endorsement.

18.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

18.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

19. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions.

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

20. [Reminder: if federal funds will or may be used, add any specific terms or requirements to Exhibit E.] Federal Funds.

Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

21. Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

[Note: If no solicitation was done (e.g., single source procurement), you must insert stand-alone debarment and suspension language here. Standard language can be found at <http://www.mmd.admin.state.mn.us/doc/debarsusp.doc>. Questions about debarment and suspension can be directed to OSP at 651-201-2456.]

22. Contingency Fees Prohibited.

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

23. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

24. Non-discrimination (in accordance with Minn. Stat. § 181.59).

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

25. E-Verify Certification (in accordance with Minn. Stat. § 16C.075). [Remove if Contract is for Goods only]

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

26. Affirmative Action Requirements

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

26.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

26.2 Minn. R. 5000.3400-5000.3600.

26.3 General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

26.4 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all

employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

26.5 Consequences. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

26.6 Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

27. Equal Pay Certification

If Contractor is required by Minn. Stat. §363A.44 to have a current Equal Pay Certificate, and that Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor is exempt, the State may require Contractor to verify its exempt status.

28. IT Accessibility Standard.

[Instruction: this language applies when you are purchasing products or services that incorporate software applications including web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others.]

The State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software/products/subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact and/or improve the product's/service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

29. Nonvisual Access Standards.

Pursuant to Minn. Stat. §§ 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.
- These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

30. Security and Data Protection.

[For IT-related contracts, if you are a MNIT Consolidated agency, Contact MNIT at oet.isrm@state.mn.us to determine if this section is necessary and to receive current language. For physical records contact your agency legal staff to determine if necessary and to receive current language.]

31. Compliance with Data Privacy and Security Laws and Standards.

[For IT-related contracts, if you are a MNIT Consolidated agency, Contact MNIT at oet.isrm@state.mn.us to determine if this section is necessary and to receive current language. For physical records contact your agency legal staff to determine if necessary and to receive current language.]

32. Supply Chain Security.

[For IT-related contracts, if you are a MNIT Consolidated agency, Contact MNIT at oet.isrm@state.mn.us to determine if this section is necessary and to receive current language. For physical goods contact your agency legal staff to determine if necessary and to receive current language.]

33. PCI Language.

[Instruction: if the Contractor is accepting credit card, P-Card or Fleet Card as a form of payment either from the public or the state, the following clause must be included.]

All of Contractor's systems and components that process, store, or transmit Cardholder Data shall comply with the most recent version of the Payment Card Industry Data Security Standard ("PCI DSS") promulgated by the PCI Security Standards Council, available online at: https://www.pcisecuritystandards.org/document_library. The Contractor shall, upon request, provide the State with Contractor's current Attestation of Compliance signed by a PCI QSA ("Qualified

Security Assessor”). For purposes of this sub-section, “Cardholder Data” has the meaning defined by the PCI Security Standards Council, Payment Card Industry (PCI) Data Security Standard (DSS) and Payment Application Data Security Standard (PA-DSS), **Glossary of Terms, Abbreviations, and Acronyms**, available online at: https://www.pcisecuritystandards.org/document_library.

Exhibit B: Insurance Requirements

[Option if not a service contract and insurance is not required]

This Contract does not have any insurance requirements.

[Otherwise, all service contracts require insurance. The insurance requirements below generally represent the minimums. Depending upon the type of work and the risk involved, other types of insurance may be necessary (e.g. – cyber insurance). Contact the Department of Administration’s Risk Management Office, 651-201-2591, with any questions you may have.]

1. Notice to Contractor.

- 1.1 The Contractor is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under the contract.
- 1.2 Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
- 1.3 The failure of the State to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the Contractor to provide such insurance.
- 1.4 The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State’s authorized representative upon written request.

2. Notice to Insurer.

- 2.1 The Contractor’s insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 2.2 Insurance certificate holder should be addressed as follows:

State of Minnesota
Department of Administration
50 Sherburne Avenue, Room 112
St. Paul, MN 55155

3. Additional Insurance Conditions. The following apply to the Contractor, or the Contractor’s subcontractor:

- 3.1 Contractor’s policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor’s performance under this contract;
- 3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State within five (5) business days with a copy of the cancellation notice, unless Contractor’s policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State;

- 3.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- 3.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- 3.5 Contractor's policy(ies) shall include legal defense fees in addition to its professional liability policy limits;
- 3.6 Contractor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best; and
- 3.7 An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

4. Coverages. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

OPTION ONE: General Insurance Requirements

4.1 Workers' Compensation Insurance. Statutory Compensation Coverage. Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

- \$100,000 – Bodily Injury by Disease per employee
- \$500,000 – Bodily Injury by Disease aggregate
- \$100,000 – Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State with a certificate of insurance.

OPTION ONE: General Liability

4.2 Commercial General Liability Insurance. Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

- \$2,000,000 – per occurrence
- \$2,000,000 – annual aggregate
- \$2,000,000 – annual aggregate – applying to Products/Completed Operations

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- Other; if applicable, please list _____
- **State of Minnesota named as an Additional Insured**, to the extent permitted by law

4.3 Commercial Automobile Liability Insurance. **[Auto Liability insurance is only applicable if the contractor, contractor’s employees, or subcontractors will be driving on state property or will be using, owned, hired, or non-owned vehicles to conduct business on behalf of the state.]** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

Evidence of Subcontractor insurance shall be filed with the Contractor.

Additional Insurance Requirements (OPTIONAL). Your agency will need to determine whether to include or exclude the following coverages based on the nature of the contract. For assistance please contact the Department of Administration’s Risk Management Office at (651) 201-2591.

4.4 Professional Liability, Errors, and Omissions. This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor’s professional services required under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

4.5 Network Security and Privacy Liability Insurance (or equivalent). **[Include this insurance requirement when there are technology-related risks (e.g., software licenses, subscription services, maintenance and support services). Also, use when Contractor has access to not public data on state’s network or on Contractor’s network.]**

The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Contractor shall maintain insurance to cover claims which may arise from failure of Contractor’s security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:

\$2,000,000 per occurrence
\$2,000,000 annual aggregate

The following coverage shall be included:

State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

4.6 Privacy Liability Insurance (or equivalent). **[Include this insurance requirement when there are no technology-related risks but Contractor has access to not public data that is not on a network (e.g., paper records).]** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The Contractor shall maintain insurance to cover claims which may arise from failure of the Contractor to ensure the security of not public data stored on the State's documents, including but not limited to paper, microfilms, microfiche, magnetic computer tapes, cassette tapes, photographic negatives, photos, hard disks, floppy disks, and carbon sheets, while in the Contractor's care, custody, and control. Insurance minimum limits are as follows:

\$2,000,000 - Per Occurrence
\$2,000,000 - Annual Aggregate

The following coverage shall be included:

State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

4.7 Property of Others Insurance (or equivalent). The Contractor shall maintain a Property insurance policy covering "All Risk" of direct physical loss or damage, or equivalent, including the perils of theft, flood, transit, earthquake, and pollution clean-up expense for property owned by the state that is in the Contractor's care, custody, and control. Any deductible shall be the sole responsibility of the Contractor. Insurance **minimum** limits are as follows:

The Contractor is solely responsible for the coverage equal to that of the actual cash value of state-owned property in the Contractor's care, custody, and control at any given point in time.

Exhibit C: Specifications, Duties, and Scope of Work

[If Contractor's duties are fully described in Contract Section 2, indicate this page is Intentionally Left Blank.]

Exhibit D: Pricing

[Remove this Exhibit if Pricing is entirely addressed in Contract Section 4]

Exhibit D – Attachment 1
Contract Price Schedule

Attached is a sample invoice.

Contractor is required to use the sample invoice for all transactions under this Contract. Contractor may not materially change either document unless the change has been approved in writing by the Commissioner of Administration, as delegated to the Office of State Procurement. Contractor may not modify the sample invoice to provide less detail regarding purchases under the Contract. Contractor hereby waives the right to enforce any term in either sample which contradicts or modifies any term of the solicitation or any master contract that may result, including subsequent amendments to the master contract, or would result in an unencumbered expense if enforced against the state or its CPV members. The State anticipates the sample quote and sample invoice will contain, at a minimum:

- Customer name
- State Contract number field
- Service description
- Explanation of work performed per charge indicated on the invoice [this could address number of hours worked or deliverables completed – customize as appropriate]

Exhibit E

[placeholder to attach any additional contract exhibits]