Professional and Technical Services Master Contract

State Of Minnesota

SWIFT Contract Number: 127291

This Professional and Technical Services Master Contract is between the State of Minnesota, acting through its Department of Employment and Economic Development ("State") and

Fraser
2400 W 64th St
Richfield, MN 55423

("Contractor").

Recitals

1. Under Minnesota Statute § 15.061, the State is empowered to contract for professional or technical services and a contract negotiated under this section is not subject to the competitive bidding requirements of chapter 16C(10).

2. Under Minnesota Statute § 268A.03(b), and Minnesota Rules 3300.5060, the State is empowered to provide vocational rehabilitation services to persons with disabilities in accordance with the federal Rehabilitation Act of 1973, Public Law 93-112, as amended, and persons with a disability are entitled to informed choice of vendor.

3. Under Minnesota Statute § 268A.03(j), the State is empowered to enter into contractual arrangements with instrumentalities of federal, state, or local government and with private individuals, organizations, agencies, or facilities with respect to providing vocational rehabilitation or independent living services.

4. Under Minnesota Rules 3300.5060, the State must provide vocational rehabilitation services to: (a) determine whether an individual is eligible for vocational rehabilitation services and the nature and scope of vocational rehabilitation services needed by the individual, and (b) to assist an eligible individual to achieve an employment goal in accordance with the eligible individual's approved employment plan.

5. This Professional and Technical Services Master Contract is for the purposes of Minnesota Rules 3300.5060, whereby payments may be made to:

(a) Community Rehabilitation Program (CRP) contractors that are CARF accredited

(b) Community Rehabilitation Program (CRP) contractors that are in the process of applying for CARF accreditation

(c) Limited-Use Vendor (LUV) contractors that are non-CARF accredited specifying the maximum dollar amount the contractors may receive, and

(d) Center for Independent Living (CIL) contractors.

6. The State may have need for the vocational rehabilitation services under this Professional and Technical Services Master Contract, but the State does not commit to spending any money with the Contractor.

7. The Contractor represents that it is duly qualified and agrees to perform all services described in this Professional and Technical Services Master Contract and performed under a work authorization to the satisfaction of the State.

Professional and Technical Services Master Contract

1. **Term of Professional and Technical Services Master Contract.**

   1.1. ***Effective Date:*** **July 1, 2017**, or the date the State obtains all required signatures under Minnesota Statute§ 16C.05, subdivision 2, whichever is later. The contractor must not accept work under this Professional and Technical Services Master Contract until this Professional and Technical Services Master Contract is fully executed and the Contractor has been notified by the State's Authorized Representative that it may begin accepting Work Authorizations.

   1.2. ***Work Authorizations****.* The term of work under Work Authorizations issued under this Professional and Technical Services Master Contract may not extend beyond the expiration date of this Professional and Technical Services Master Contract.

   1.3. ***Expiration Date: June 30, 2022***.

   1.4. ***Survival of Terms*****.** The following clauses survive the expiration or cancellation of this master contract and all work authorizations: 8. Indemnification; 9.State Audits; 10. Government Data Practices and Intellectual Property; 14. Publicity and Endorsement; 15.Governing Law, Jurisdiction, and Venue; and 16. Data Disclosure.

2. **Scope of Work.**

   The Contractor, who is not a state employee, may be requested to perform any of the services identified in Attachment B – Fee-for-Service Rate Schedule when requested under a Work Authorization in accordance with the Employment Plan developed between

Vocational Rehabilitation Services (VRS) and an individual consumer. A complete detailed description of required work will be furnished in each Work Authorization issued. The Contractor may begin work only upon receipt of a fully executed Work Authorization. No effort, expenses, or actions taken before the Work Authorization is fully executed are authorized under Minnesota Statutes, and all such efforts, expenses and actions are under taken at the sole responsibility and expense of the Contractor.

When Contractor accepts Work Authorizations to provide services, Contractor shall manage and disburse funds to persons served without additional charge to the State or persons served.

Additional terms and conditions of the applicable work to be performed are attached and incorporated herein as Attachment A – Work Plan and, if applicable, Attachment B – Fee-for-Service Rate Schedule and Performance Based Agreement (PBA) for Placement and Retention Services as referenced at http://mn.gov/deed/job-seekers/disabilities/partners/.

The Contractor understands that this master contract is not a guarantee of a work order contract. The State has determined that it may have need for the services under this master contract, but does not commit to spending any money with the Contractor.

3. **Time.**

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

4. **Consideration and Payment.**

4.1. ***Consideration***.

All services provided by the Contractor under this contract shall be performed to the State's satisfaction, as determined at the sole discretion of the State and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Contractor shall not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law. The State will pay for all services satisfactorily performed by the Contractor, under fully executed Work Authorizations issued under this Professional and Technical Services Master Contract, according to the applicable fee schedule(s), attached and incorporated herein as Attachment B – Fee-for-Service Rate Schedule and, if applicable, Performance Based Agreement (PBA) for Placement and Retention Services as referenced at: http://mn.gov/deed/job-seekers/disabilities/partners/. The total compensation of all Work Authorizations may not exceed $750,000.

4.2. ***Fee-for-Service Rates*.** Contractor shall ensure costs used to determine rates for service fees shall be:

(a) Necessary and reasonable, in nature and amount, costs will not exceed that which would be incurred by a prudent person under the same circumstances;

(b) Costs shall be allocable and assignable to VRS and the costs will be incurred for the exclusive benefit of persons referred by the State;

(c) Costs shall be adequately documented; and

(d) Costs shall be subject to State monitoring, audit and reconciliation.

The Contractor shall not bill the State for an amount greater than the fee for service indicated in the current fee schedule, Attachment B – Fee-for-Service Rate Schedule. The Contractor shall charge the State no higher fee than the Contractor charges other purchasers of services, and may bill for services only for the authorized time period.

4.3. ***Performance Based Milestone Rates*.** The Contractor shall invoice the State only the Performance Based Agreement (PBA) milestone rates in as referenced at http://mn.gov/deed/job-seekers/disabilities/partners/ for all placement and retention services that meet the scope, terms and conditions.

4.4. **Payment.**

(a) ***Invoices***. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services and the report(s) required under Item 2, Scope of Work, for the services actually performed and the State's Authorized Direct Service Staff Representative accepts the invoiced services. The invoice must include the dates of service, a unique invoice number, the work authorization number, and the type of service. Invoices must match the proper work authorization. Invoices must be submitted within 90 days from the end date of the work authorization. Failure to submit an invoice within 90 days from the end date of the work authorization will be considered a material breach of contract. This will result in in non-payment for that service.

(b) ***Federal funds*.** Payments under this contract will be made from federal funds obtained by the State through Title 1 CFDA number 84.126 of the Rehabilitation Act of 1973. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor’s failure to comply with federal requirements.

5. **Conditions of Payment.**

All services provided by the Contractor under Work Authorizations must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative 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.

6. **Authorized Representatives.**

The State's Authorized Representative for this master contract is **Chris McVey, Director Strategic Initiatives and Partnerships, 651-259-7357**, or her successor, and has the responsibility to monitor the Contractor's performance. The State's Project Manager will be identified in each Work Authorization.

The Contractor's Authorized Representative is **Diane Cross, President/CEO**, **612-861-1688**, or their successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

7. **Assignment, Amendments, Waiver, and Contract Complete.**

7.1. ***Assignment.*** The Contractor may neither assign nor transfer any rights or obligations under this Professional and Technical Services Master Contract or any Work Authorization without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Professional and Technical Services Master Contract, or their successors in office.

7.2. ***Amendments.*** Any amendment to this Professional and Technical Services Master Contract or any Work Authorization must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Professional and Technical Services Master Contract, or their successors in office.

7.3. ***Waiver.*** If the State fails to enforce any provision of this Professional and Technical Services Master Contract or any Work Authorization, that failure does not waive the provision or its right to enforce it.

7.4. ***Contract Complete***. This Professional and Technical Services Master Contract and any Work Authorizations contain all negotiations and agreements between the State and the Contractor. No other understanding regarding this Professional and Technical Services Master Contract or Work Authorization, whether written or oral, may be used to bind either party.

8. **Indemnification**

8.1. In the performance of this Professional and Technical Services Master Contract by Contractor, or Contractor's agents or employees, 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:

(a) Intentional, willful, or negligent acts or omissions; or

(b) Actions that give rise to strict liability; or

(c) Breach of contract or warranty.

8.2. 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 Professional and Technical Services Master Contract.

9. **State Audits.**

Under Minnesota Statute § 16C.05, subdivision 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to any Work Authorization are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Professional and Technical Services Master Contract.

10. **Government Data Practices and Intellectual Property.**

10.1. ***Government Data Practices***.

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute Ch. 13, as it applies to all data provided by the State under any Work Authorization, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under the Work Authorization. The civil remedies of Minnesota Statute§ 13.08 apply to the release of the data referred to in this clause 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 the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

Cloud Security and Data Protection as referenced in attachment C.

10.2. ***Intellectual Property Rights***

(a) *Intellectual property rights.* 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 Work Authorizations. 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 master contract or any Work Authorization. Works includes "Documents." 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 a Work Authorization. The Documents will 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 the Work Authorization. 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.

(b) *Obligations*

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

(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.

Notwithstanding Clause 8, 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. **Workers' Compensation and Other Insurance Requirements.**

Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

11.1. ***Workers' Compensation Insurance*:** 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 of Minnesota, 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 Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, 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 Professional and Technical Services Master Contract the Contractor becomes eligible for Workers' Compensation, the Contractor must

comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

11.2. **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 Professional and Technical Services Master 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 – 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: None
State of Minnesota named as an Additional Insured

11.3. **Commercial Automobile Liability Insurance**: If Contractor transports DEED consumers, 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 Professional and Technical Services Master 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

11.4. **Additional Insurance Conditions:**

(a) Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this Professional and Technical Services Master Contract;

(b) Contractor's policy(ies) and Certificate(s) of Insurance shall contain a provision that coverage afforded under the policy(ies) shall not be cancelled without at least thirty (30) days advanced written notice to the State of Minnesota;

11.5. The State reserves the right to immediately terminate the Professional and Technical Services Master 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.

11.6. If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota 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 of Minnesota**;**

11.7. Contractor is responsible for payment of Contract related insurance premiums and deductibles;

11.8. If Contractor is self-insured, a Certificate of Self-Insurance must be attached;

11.9. Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above

11.10. Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and

11.11. 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

11.12. The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the Professional and Technical Services Master Contract.

11.13. Further, the Contractor certifies that it is in compliance with Minnesota Statute § 176.181, subdivision 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

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

Contractor certifies that neither it nor its principles is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Professional and Technical Services Master 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.

13. **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 Professional and Technical Services Master 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 Professional and Technical Services Master Contract award was based.

13.1. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions**

Instructions for Certification

(a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

(b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

(d) The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which

this proposal is submitted for assistance in obtaining a copy of those regulations.

(e) The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(i) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

13.2. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.**

(a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

14. **Publicity and Endorsement.**

14.1. ***Publicity***. Any publicity regarding the subject matter of a Work Authorization 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, 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 a Work Authorization.

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

15. **Governing Law, Jurisdiction, and Venue.**

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

16. **Data Disclosure.**

Under Minnesota Statute § 270C.65, Subdivision 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or 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.

17. **Payment to SubContractors.**

(If applicable) As required by Minnesota Statute § 16A.1245, the prime Contractor must pay all subContractors, less any retainage, within 10 calendar days of the prime Contractor's receipt of payment from the State for undisputed services provided by the subContractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subContractor(s) on any undisputed amount not paid on time to the subContractor(s).

18. **Termination.**

18.1. ***Termination by the State.*** The State or commissioner of Administration may cancel this Professional and Technical Services Master Contract and any Work Authorizations 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 satisfactorily performed.

(a) **Community Rehabilitation Program (CRP)** Contractor shall maintain CARF-accreditation for all services and service locations provided under this Professional and Technical Services Master Contract that can be accredited by CARF. Contractor shall provide evidence of accreditation including, but not limited to: Survey Report and Quality Improvement Plans.

The State permits the Contractor to add new services to this Professional and Technical Services Master Contract between CARF site surveys providing no new service vended to the State remains unaccredited for more than 3 years. CARF-accredited Contractors will be permitted to provide services under this Professional and Technical Services Master Contract for a maximum of 5 years. Contractor failure to maintain accreditation will result in the termination of this Professional and Technical Services Master Contract.

(b) **Limited-Use Vendor (LUV) CARF Pending.** A LUV that makes commitment to achieving CARF accreditation, but does not engage in a site survey within 3 years, or engages in a site survey but does not receive accreditation, shall be prohibited from vending services to the State for a period of 3 years or until the services become accredited by CARF.

(c) **Limited-Use Vendor (LUV)** A non-CARF-accredited Contractor will be permitted to provide limited services. The term of the contract shall not exceed two years or $40,000. The State will lift the term and dollar restrictions of a LUV that makes a written commitment to become CARF-accredited within one year by demonstrating reasonable follow through and providing the State with evidence of:

(a) Intent to Survey (Application)
(b) Payment
(c) Site survey schedule
(d) Survey report.

(d) **Center for Independent Living (CIL) A** Center for Independent Living shall maintain their VRS Certification and will be permitted to provide IL services under this Professional and Technical Services Master Contract for a maximum of 5 years. Failure to maintain VRS certification will result in the termination of this Professional and Technical Services Master Contract.

18.2. ***Termination for Insufficient Funding.*** The State may immediately terminate this Professional and Technical Services Master Contract and any Work Authorization 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 or fax 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 funds are available. The State will not be assessed any penalty if the Professional and Technical Services Master Contract or work order 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.

19. **Non-Discrimination (in accordance with Minnesota Statute § 181.59).**

The Contractor will comply with the provisions of Minnesota Statute § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

(1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or

conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) That a violation of this section is a misdemeanor; and

(4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."

20. **Affirmative Action Requirements for Contracts in Excess of $100,000 and if the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business.**

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

20.1. ***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 principle place of business, then the Contractor must comply with the requirements of Minnesota Statute § 363A.36 and Minnesota Rule Parts 5000.3400-5000.3600. A Contractor covered by Minnesota Statute § 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.

20.2. ***Minnesota Statute § 363A.36***. Minnesota Statute § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

20.3. ***Minnesota Rule 5000.3400-5000.3600.***

(a) *General*. Minnesota Rule 5000.3400-5000.3600 implement Minnesota Statute § 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 Minnesota Rule 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

(b) *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 Minnesota Statutes Section 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 of the Minnesota Department of Human Rights. 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 Minnesota Statutes Section 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.

(c) *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.

(d) *Certification*. The Contractor hereby certifies that it is in compliance with the requirements of Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

21. **E-Verify Certification (In accordance with Minn. Stat. §16C.075).**

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/mn02000.htm. All subContractor certifications must be kept on file with Contractor and made available to the State upon request.

Signatures

1. 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:: Michael F Ness

Signature: Original signed

Title: CEO

Date: 6/16/2017

2. STATE AGENCY

With delegated authority

Print Name: Kim Peck

Signature: Original signed

Title: Vocational Rehabilitation Services Director

Date: 6/16/2017

3. COMMISSIONER OF ADMINISTRATION

As delegated to Office of State Procurement

Print Name: Sara Freedland

Signature: Original signed

Title: AMS

Date: 6/29/2017

Attachment A – Work Plan

Contractor shall hire, train, and make available qualified personnel to perform and administer vocational rehabilitation services. Contractor shall conduct background checks using primary sources on all personnel authorized to provide direct services or transport persons served under this contract. When transportation is provided for persons served under this contract, Contractor shall maintain current records of driving licenses and satisfactory driving history of drivers.

Contractor shall provide for the integrity and security of its information assets including, but not limited to, each automated system, electronic file, database or paper file, by establishing appropriate internal policies and procedures for preserving the integrity and security of the personal information of individuals served.

Contractor shall work collaboratively as part of the team with VRS staff in providing services that are part of the person's served Employment Plan.

Contractor shall develop and share detailed written information outlining the procedure for notifying VRS and the person or their guardian regarding their acceptance for services listed in Attachment B, Fee-for-Service Rate Schedule. The written information, at a minimum, should include: (a) start date notification, (b) intake process and location, (c) orientation to the Contractor, (d) service planning and delivery, (e) monitoring of service provided, (f) communication and progress reports, (g) service exit or termination.

Contractor shall provide the most effective mode(s) of communication to all populations without charge to VRS or persons served. Contractor shall provide Interpreter services for all services in Attachment B, Fee-for-Service Rate Schedule, and Performance Based Agreement (PBA) for Placement and Retention Services as referenced at https://mn.gov/deed/job-seekers/disabilities/partners/. Contractor is responsible for all necessary interpreting costs.

Contractors need to notify VRS on the same day that the scheduled service(s) is cancelled in order to receive the cancellation fee.

Documentation (phone calls, emails, report writing, case notes) time is built into the fee structure and rates, therefore is not billable.

VRS expects all documentation be provided in accessible format whenever possible.

Attachment B-2 – Fee-for-Service Rate Schedule

Contractor: Fraser

SWIFT Number: 0000203720001

Referral Contact(s) and Phone Number(s):

Chris Bentley 612-798-8331 or Chris.Bentley@Fraser.org

Effective Date: October 23, 2019

Service Title	**Fee**	**Unit**
Placement and Retention Services under a Performance Based Agreement (PBA) See Performance Based Agreement (PBA) for Placement and Retention Services as referenced at https://mn.gov/deed/job-seekers/disabilities/partners/	☒ Yes ☐ No	
~~Cancellation Fee~~	~~$50~~	~~Hour~~
Consultation for Small Business	$100	Hour
Employment Supports/Job Coaching for Short Term Job Supports	$100	Hour
Informational Interviews ~~(Transition/Youth Pre-ETS)~~	$100	Hour
Intake (Not Applicable to PBA)	$500 $100	5 Hours Hour
Job Seeking Skills Training	$70 $600 $30	Hour Each Course (20 Hours) Each Workshop
Job Shadowing	$85	Hour
Job Tryout	$50	Hour
On-the-Job Evaluation	$100	Hour

Service Title	Fee	Unit
Postsecondary Supports (Remedial Training or Services)	$120 $2250	Hour Semester
Social Coaching (Personal Adjustment Training)	$75	Hour
Transportation (Mileage Reimbursement)	Current IRS Rate	Per Mile

Pre-Employment Transition Services (Pre-ETS)

Pre-ETS Individual Rates

Service Title	Fee for Individual Rate	Unit
Pre-ETS Job Exploration Counseling Services	$75	Hour
Pre-ETS Post-Secondary Education Counseling Services	$75	Hour
Pre-ETS Independent Living Services or Soft Skills Training	$75	Hour
Pre-ETS Job Seeking Skills Training	$75	Hour
Pre-ETS Instruction in Self-Advocacy Services	$75	Hour
Pre-ETS Informational Interview	$75	Hour
Pre-ETS Job Shadow	$75	Hour

Pre-ETS Group Rate

The group rate may be used for all Pre-ETS services listed in the individual rate section, with the exception of Work Experience – Services and Work Experience – Wages.

Pre-ETS Rates

Services performed
0-25 miles from provider

Individual Rate

Individual Rate	*Cost Per Student Per Hour*	*Total Payment to Provider*
Individual Rate	$ 75	$ 75

Group Rates

Number of Students in Group	*Cost Per Student Per Hour*	*Total Payment to Provider*
2	$ 40	$ 80
3	$ 30	$ 90
4	$ 25	$ 100
5	$ 21	$ 105
6	$ 18	$ 108
7	$ 16	$ 112
8	$ 15	$ 120
9	$ 15	$ 135
10	$ 15	$ 150
11	$ 15	$ 165
12	$ 15	$ 180
13	$ 15	$ 195
14	$ 15	$ 210
15	$ 15	$ 225

Pre-ETS Travel Differential

The travel differential rates may be used for all Pre-ETS services listed in the individual rate section.

Travel Differential
26-50 miles from provider

Individual Rate

Individual Rate	*Cost Per Student Per Hour*	*Total Payment to Provider per Hour*
Individual Rate	$ 90	$ 90

Group Rates

Number of Students in Group	*Cost Per Student Per Hour*	*Total Payment to Provider per Hour*
2	$ 50	$ 100
3	$ 35	$ 105
4	$ 30	$ 120
5	$ 26	$ 130
6	$ 23	$ 138
7	$ 21	$ 147
8	$ 20	$ 160
9	$ 20	$ 180
10	$ 20	$ 200
11	$ 20	$ 220
12	$ 20	$ 240
13	$ 20	$ 260
14	$ 20	$ 280
15	$ 20	$ 300

Travel Differential
51-75 miles from provider

Individual Rate

Individual Rate	*Cost Per Student Per Hour*	*Total Payment to Provider per Hour*
Individual Rate	$ 105	$ 105

Group Rates

Number of Students in Group	*Cost Per Student Per Hour*	*Total Payment to Provider per Hour*
2	$ 55	$ 110
3	$ 40	$ 120
4	$ 35	$ 140
5	$ 31	$ 155
6	$ 28	$ 168
7	$ 26	$ 182
8	$ 25	$ 200
9	$ 25	$ 225
10	$ 25	$ 250
11	$ 25	$ 275
12	$ 25	$ 300
13	$ 25	$ 325
14	$ 25	$ 350
15	$ 25	$ 375

Travel Differential
76-100 miles from provider

Individual Rate

Individual Rate	*Cost Per Student Per Hour*	*Total Payment to Provider per Hour*
Individual Rate	$ 120	$ 120

Group Rates

Number of Students in Group	*Cost Per Student Per Hour*	*Total Payment to Provider per Hour*
2	$ 65	$ 130
3	$ 45	$ 135
4	$ 40	$ 160
5	$ 36	$ 180
6	$ 33	$ 198
7	$ 31	$ 217
8	$ 30	$ 240
9	$ 30	$ 270
10	$ 30	$ 300
11	$ 30	$ 330
12	$ 30	$ 360
13	$ 30	$ 390
14	$ 30	$ 420
15	$ 30	$ 450

Travel Differential
101-125 miles from provider

Individual Rate

Individual Rate	*Cost Per Student Per Hour*	*Total Payment to Provider per Hour*
Individual Rate	$ 135	$ 135

Group Rates

Number of Students in Group	*Cost Per Student Per Hour*	*Total Payment to Provider per Hour*
2	$ 70	$ 140
3	$ 50	$ 150
4	$ 45	$ 180
5	$ 41	$ 205
6	$ 38	$ 228
7	$ 36	$ 252
8	$ 35	$ 280
9	$ 35	$ 315
10	$ 35	$ 350
11	$ 35	$ 385
12	$ 35	$ 420
13	$ 35	$ 455
14	$ 35	$ 490
15	$ 35	$ 525

Attachment B-1 – Fee-for-Service Rate Schedule

Contractor: Fraser

SWIFT #: 0000203720001

Referral Contact(s) and phone number(s):

Christine Bentley 612-798-8331 or Chris.Bentley@Fraser.org

Effective Date: November 14, 2018

Service Title	Fee	Unit
Placement and Retention Services under a Performance Based Agreement (PBA) See Performance Based Agreement (PBA) for Placement and Retention Services as referenced at https://mn.gov/deed/job-seekers/disabilities/partners/	☒ Yes ☐ No	
☐ Occupational Communication Specialist Services (OCSS) Differential for PBA	$400	Each
Cancellation Fee	$50	Hour
Consultation for Small Business	$100	Hour
Employment Supports/Job Coaching for Short Term Job Supports	$100	Hour
Informational Interviews	$100	Hour
Intake (Not Applicable to PBA)	$500 $100	5 Hours Hour
Job Seeking Skills Training	~~$500~~ $70 $600 $30	~~Each Course (2 Hours)~~ Hour Each Course (20 Hours) Each Workshop

EXPIRED

Service Title	**Fee**	**Unit**
Job Shadowing	$85	Hour
Job Tryout	$50	Hour
On-the-Job Evaluation	$100	Hour
Postsecondary Supports (Remedial Training or Services)	$120 $2250	Hour Semester
Social Coaching (Personal Adjustment Training)	$75	Hour
Transportation (Mileage Reimbursement)	Current IRS Rate	Per Mile

EXPIRED

Attachment B – Fee-for-Service Rate Schedule

Contractor: Fraser

SWIFT #:0000203720

Referral Contact(s) and phone number(s):

Christine Bentley, 612-798-8331, Chris.Bentley@Fraser.org

Effective Date: 7/1/2017

Service Title	Fee	Unit
Placement and Retention Services under a Performance Based Agreement (PBA) See Performance Based Agreement (PBA) for Placement and Retention Services as referenced at https://mn.gov/deed/job-seekers/disabilities/partners/	☒ Yes ☐ No	
Cancellation Fee	$50	Hour
Consultation for Small Business	$100	Hour
Customized Employment	$100	Hour
Employment Supports/Job Coaching for Short Term Job Supports	$100	Hour
Informational Interviews (Transition/Youth Pre-ETS)	$100	Hour
Intake (Not Applicable to PBA)	$500 $100	5 Hours Hour
Job Seeking Skills Training	$70 $500 $30	Hour Course (2 hours) Workshop
Job Shadowing	$85	Hour
On-the-Job Evaluation	$100	Hour
Postsecondary Supports (Remedial Training or Services)	$120 $2250	Hour Semester

Expired

Service Title	Fee	Unit
Social Coaching (Personal Adjustment Training)	$75	Hour
Transportation (Mileage Reimbursement)	Current IRS Rate	Mile

Expired

Attachment C

Security and Data Protection

Contractor is responsible for the security and protection of State data subject to and related to Cloud Services in this Contract. The terms, conditions, and provisions of this Security and Data Protection section take precedence and will prevail over any other terms, conditions, and provisions of the Contract, if in conflict. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Contract.

For the purposes of this Security and Data Protection section, the following terms have the following meanings:

> "Cloud Services" includes "cloud computing" as defined by the U.S. Department of Commerce, NIST Special Publication 800-145 (currently available online at: http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf) and any other software, hardware, hosting service, subscription, or other service or product by which Contractor stores, transmits, processes or otherwise has access to State data.
>
> "State" means the State of Minnesota, or a cooperative purchasing venture ("CPV") member when the CPV member is the purchasing entity (if CPV purchases are permitted under this Contract).
>
> "Data" has the meaning of "government data" in Minnesota Statutes section 13.02, subdivision 7.
>
> "Not public data" has the meaning in Minnesota Statutes section 13.02, subdivision 8a.
>
> "Security incident" means any actual, successful or suspected: (1) improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, modification of, alteration to, loss of, damage to or destruction of State data; (2) interference with an information system; (3) disruption of or to Contractor's service(s); or (4) any similar or related incident.
>
> "Privacy incident" means violation of the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13); violation of federal data disclosure or privacy requirements in federal laws, rules and regulations; and/or breach of a contractual obligation to protect State data. This includes, but is not limited to, improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, damage to, loss of, modification of, alteration to or destruction of State data protected by such State or federal laws or by contract.

a. **Data Ownership**. The State solely and exclusively owns and retains all right, title and interest, whether express or implied, in and to any and all State data. Contractor has no and acquires no right, title or interest, whether express or implied, in and to State data.

   Contractor will only use State data for the purposes set forth in the Contract. Contractor will only access State data as necessary for performance of this Contract. Contractor will not access State user accounts except to respond to service or technical problems or at the State's specific request.

   All State data, including copies, summaries and derivative works thereof, must be remitted, in a mutually agreeable format and media, to the State by the Contractor upon request or upon completion, termination or cancellation of the Contract. The foregoing sentence does not apply if the State Chief Information Security Officer or delegate authorizes in writing the Contractor to sanitize and/or destroy the data and the Contractor certifies in writing the sanitization and/or destruction of the data. Within ninety days following any remittance of State data to the State, Contractor shall, unless otherwise instructed by the State in writing, sanitize and/or destroy any remaining data and certify in writing that the sanitization and/or destruction of the data has occurred. Any such remittance, sanitization or destruction will be at the Contractor's sole cost and expense.

b. **Notification of Incidents**. If Contractor becomes aware of or has reasonable suspicion of a privacy incident or security incident regarding any State data, Contractor must report such incident to the State and the State Chief Information Security Officer as soon as possible, but no later than twenty-four (24) hours after such incident. The decision to notify the affected data subjects and the form of such notice following report of a privacy incident or security incident are the responsibility of the State. Notwithstanding anything to the contrary in this Contract, Contractor will indemnify, hold harmless and defend the State and its officers, and employees for and against any claims, damages, costs and expenses related to any privacy incident or security incident involving any State data. For purposes of clarification, the foregoing sentence shall in no way limit or diminish Contractor's obligation(s) to indemnify, save, hold harmless, or defend the State under any other term of this Contract. Contractor will reasonably mitigate any harmful effects resulting from any privacy incident or security incident involving any State data.

c. **Data Management**. Contractor will not use State data, including production data, for testing or development purposes unless authorized in writing by the State Chief Information Security Officer or delegate. Contractor will implement and maintain procedures to physically and logically segregate State data, unless otherwise explicitly authorized by the State Chief Information Security Officer or delegate.

d. **Data Encryption**. Contractor must encrypt all State data at rest and in transit, in compliance with FIPS Publication 140-2 or applicable law, regulation or rule, whichever is a higher standard. All encryption keys must be unique to State data. Contractor will secure and protect all encryption keys to State data. Encryption keys to State data will only be accessed by Contractor as necessary for performance of this Contract.

e. **Data Storage**. Contractor warrants that any and all State data will be stored, processed, and maintained solely on designated servers and that no such data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes.

f. **Data Center and Monitoring/Support Locations**. During the term of the Contract, Contractor will: (1) locate all production and disaster recovery data centers that store, process or transmit State data only in the continental United States, (2) store, process and transmit State data only in the continental United States, and (3) locate all monitoring and support of all the Cloud Services only in the continental United States. The State has the right to on-site visits and reasonable inspection of the data centers upon notice to Contractor of seven calendar days prior to visit.

g. **Security Audits & Remediation**. Contractor will audit the security of the systems and processes used to provide any and all Cloud Services, including those of the data centers used by Contractor to provide any and all Cloud Services to the State. This security audit: (1) will be performed at least once every calendar year beginning with 2016; (2) will be performed according Statement on Standards for Attestation Engagements ("SSAE") 16 Service Organization Control ("SOC") 2, International Organization for Standardization ("ISO") 27001, or FedRAMP; (3) will be performed by third party security professionals at Contractor's election and expense; (4) will result in the generation of an audit report ("Contractor Audit Report"), which will, to the extent permitted by applicable law, be deemed confidential information and as not public data under the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13); and (5) may be performed for other purposes in addition to satisfying this section.

   Upon the State's reasonable, advance written request, Contractor will provide to the State a copy of the Contractor Audit Report.

   Contractor will make best efforts to remediate any control deficiencies identified in the Contractor Audit Report in a commercially reasonable timeframe.

   If the State becomes aware of any other Contractor controls that do not substantially meet the State's requirements, the State may request remediation from Contractor. Contractor will make best efforts to remediate any control deficiencies identified by the State or known by Contractor, in a commercially reasonable timeframe.

h. **Subcontractors and Third Parties**. Contractor warrants that no State data will be transmitted, exchanged or otherwise provided to other parties except as specifically agreed to in writing by the State Chief Information Security Officer or delegate. Contractor must ensure that any contractors, subcontractors, agents and others to whom it provides State data, agree in writing to be bound by the same restrictions and conditions under this Contract that apply to Contractor with respect to such data.

i. **Compliance with Data Privacy and Security Laws and Standards**. Contractor shall comply with all applicable State and federal data privacy and data security laws, rules, and regulations.

j. **Remedies**. Contractor acknowledges that the State, because of the unique nature of its data, would suffer irreparable harm in the event that Contractor breaches its obligation under this Security and Data Protection section, and monetary damages may not adequately compensate the State for such a breach. In such circumstances, the State will be entitled, in addition to monetary relief, to injunctive relief or specific performance as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by the State.

k. **Business Continuity**. Contractor shall have written business continuity and disaster recovery plans that define the roles, responsibilities and procedures necessary to ensure that Cloud Services provided under this Contract shall be maintained continuously in the event of a disruption to the Contractor's operations, regardless of the cause of the disruption. Such plans must, at a minimum, define the Contractor's actions to address the impacts of the following key areas likely to cause a disruption to Contractor's operations: loss of key personnel, loss of facility, and loss of information technology. Contractor must conduct testing and review of its business continuity and disaster recovery plan at least annually. Upon State request, Contractor must also participate, at mutually agreed upon times, in State business continuity and disaster recovery testing, training, and exercise activities.

   Any term or condition that allows the Contractor to terminate the Contract for any or no reason (i.e., termination for convenience) is null and void. In the event of termination or cancellation of this Contract for any reason, the Contractor shall continue to provide any then-existing Cloud Services for as long as the State needs to transfer its data, software and other assets to an alternate service or service provider. After any such termination or cancellation, the State may purchase the continuing Cloud Services at the pricing in effect prior to such termination or cancellation. The fee for any such purchase shall be prorated for the period of time needed, as determined by the State, and shall be reduced by the amount paid for Cloud Services that were not used prior to such termination or cancellation. The amount of any such fee reduction shall be determined on a pro-rata basis. The Contractor shall refund to the State any unused portion of payments for Cloud Services.

l. **Secure Coding**. Contractor warrants that all Cloud Services are free from any and all defects in materials, workmanship, and design. Contractor warrants that all Cloud Services are free from any and all viruses, malware, and other harmful or malicious code. Contractor must scan all source code for vulnerabilities, including before and after any source code changes are made and again before being placed into production, and must promptly remediate any and all vulnerabilities. Contractor must follow best practices for application code review and the most current version of the OWASP top 10.

m. **Compliance with Data Privacy and Security Laws and Standards**. All of Contractor’s systems and components that process, store, or transmit Cardholder Data shall comply with

the then most recent version of the Payment Card Industry Data Security Standard ("PCI DSS") promulgated by the PCI Security Standards Council. 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, Version 3.0, January 2014, currently available online at: https://www.pcisecuritystandards.org/documents/PCI_DSS_Glossary_v3.pdf.

For the term of this Contract, Contractor will maintain a provisional Authority to Operate (ATO) at the Moderate Level from the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB) or Federal Agency for any and all Cloud Services provided under this Contract.

For the term of this Contract, Contractor will maintain an ISO 27001 Certification for any and all Cloud Services provided under this Contract.

Revised November 28, 2016