

State of Minnesota

Public Employment Relations Board



REQUEST FOR PROPOSAL

PERB Hearing Officers

Date Posted: November 3rd, 2025

Posted to State Register [Minnesota State Register / Minnesota.gov](https://mn.gov/register/)

- Responses will be received on an ongoing basis.
- Evaluation of applicants will be done monthly. Contracts will be awarded individually to successful applications.

Minnesota's Commitment to Diversity and Inclusion

The State of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans, and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651.201.2402 or go to the Office of Equity in Procurement home page, at <https://mn.gov/admin/business/vendor-info/oep/>.

SPECIAL NOTICE: This is a request for proposal. It does not obligate the State of Minnesota to award a contract or complete the proposed program, and the State reserves the right to cancel this solicitation if it is considered in its best interest.

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Solicitation Attachments

- Attachment A: Responder Declarations
- Attachment B: Exceptions to State's Terms and Conditions
- Attachment C: Cost Detail
- Attachment D: Veteran-owned Preference Form
- Attachment E: Reference Form
- Attachment F: Hypothetical Fact Situation
- Attachment G: Pass/Fail Confirmation Checklist

Sample Contract

- Exhibit A: Contract Terms
- Exhibit B: Insurance Requirements
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Pricing
- Exhibit E: Sample Work Order Contract

SECTION 1 – INSTRUCTIONS TO RESPONDERS

Steps for Completing Your Response

Follow the steps below to complete your response to this Solicitation:

Step 1: Read the solicitation documents and ask questions, if any

Step 2: Write your response

Step 3: Submit your response

Incomplete Submittals

A response must be submitted along with any required additional documents. Incomplete responses that materially deviate from the required format and content may be rejected.

STEP 1 – READ THE SOLICITATION DOCUMENT & ASK QUESTIONS, IF ANY

How to Ask Questions

The contact person for questions is:

Jess Anna King, Executive Director/General Counsel, Public Employment Relations Board (PERB)

Questions should include “Hearing Officers” in the subject line of the email and be emailed to Jess Anna at the general email account: perb@state.mn.us

Other personnel are not authorized to answer questions regarding this Solicitation.

STEP 2 – WRITE YOUR RESPONSE

The Response Content section is in this link to [Section 4](#). Prepare a written response and supply all requested content. Responses should address the requested information and documents detailed in Section 4. **DO NOT INCLUDE** Non-Public/Trade Secret data (as defined in this link to [Minn. Stat. § 13.37](#)).

Review, sign, and include the Responder Declarations with your response.

STEP 3 –SUBMIT YOUR RESPONSE

Where to Send Your Response

All responses to this solicitation must be submitted through email to Jess Anna King, Executive Director/General Counsel, Public Employment Relations Board (PERB)

Responses should include “Hearing Officers Response” in the subject line of the email and be emailed to Jess Anna at the general email account: perb@state.mn.us.

By submitting a response, your company is making a binding legal offer for the period of time set forth below in Section 6, Conditions of Offer.

Responses may be submitted at any time but will no longer be accepted after 4:30 pm CST on Monday, April 27th, 2026.

SECTION 2 – SUMMARY OF SCOPE

1. Procurement Overview and Goals.

The Minnesota Public Employment Relations Board (PERB) seeks to create a roster to contract with multiple qualified individuals to serve as Hearings Officers. PERB Hearing Officers preside over hearings to determine whether an unfair labor practice has been committed. The goal of this Request for Proposal (RFP) is to ensure that this service will be met efficiently.

PERB was created in 2014 by the Legislature to investigate, hear, and resolve unfair labor practice charges and complaints, replacing the judicial process previously in place. Pursuant to statute, complaints issued by the PERB must be heard by a qualified Hearing Officer designated by the PERB. Matters will be assigned by the Executive Director/General Counsel. The statute requires Hearing Officers to have a juris doctor degree.

The statute requires the hearing occur not more than 30 days after service of the complaint absent mutual agreement of the parties and the Hearing Officer. Hearing Officers will preside over evidentiary hearings but shall not be bound by the rules of evidence applicable to courts, except as to the rules of privilege recognized in law. Hearing Officers issue recommended decisions and orders. Hearings will primarily be conducted at the office of the PERB in St. Paul but may be conducted anywhere in Minnesota.

This RFP can be made available in large print or as a digital recording by contacting the PERB at (651) 539-1413.

2. Sample Tasks and Deliverables.

Persons serving as a PERB Hearing Officer will be required to prepare appropriately for proceedings; conduct hearings; pre-hearing or settlement conferences; perform necessary legal research; and issue recommended decisions and orders.

More Specific Tasks:

- Guide the course of evidentiary hearings by administering oaths, rendering rulings on motions and objections, and facilitating the development of a complete record.
- Prepare detailed findings of fact, conclusions of law, and recommended decisions from the hearing record. Draft orders and recommendations to meet both statutory timelines and PERB policies on timeliness, formatting and quality.
- Perform other duties defined by applicable statute, PERB rules, or the PERB Hearing Officer Handbook.

Contractor's duties do not include providing legal services to the PERB within the meaning of Minnesota Statutes § 8.06.

SECTION 3 – PROPOSAL INSTRUCTIONS AND ADDITIONAL INFORMATION

1. Anticipated Contract Term.

The term of this contract is anticipated to be from July 1, 2025, through June 30, 2027, with the option to extend up to an additional 3 years in increments determined by the State.

2. Question and Answer Instructions.

All questions should be submitted pursuant to Section 1, Instructions to Responders.

Only personnel listed in Section 1 are authorized to discuss this solicitation with responders. Contact regarding this solicitation with any personnel not listed above could result in disqualification. This provision is not intended to prevent responders from seeking guidance from state procurement assistance programs regarding general procurement questions.

If a Responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the solicitation, please immediately notify the contact person in writing of such error and request modification or clarification of the document.

SECTION 4 – PROPOSAL CONTENT

Please submit the following information:

1. Approach. Responder should submit a 2-5 paragraph written statement of interest that demonstrates the Responder's understanding of the nature of the contract and answers the following question: "Why are you qualified to be a Hearing Officer for the Public Employment Relations Board?"
2. Availability. Responder should submit a written response describing their approach to meeting the State's appointment request and hearing requirements in a timely manner. Responder should specifically describe how their approach differs when the State requires a more rapid timeline for delivery of services. Responder should identify the average number of hours of availability annually to complete work pursuant to any contract granted by this RFP. Responder should indicate the minimum and maximum number of hours they are able to devote to providing services to the PERB.

Please Note: Timeliness of hearings and decisions is essential to satisfactory performance of an agreement to provide PERB with Hearing Officer services. Estimates of availability to provide services under this Request for Proposal must reflect the requirement that hearings will be conducted not more than 30 days after the complaint is served by PERB and that written decisions will be issued within internal PERB deadlines.

3. Qualifications and Experience. Responder should provide a written description of background and experience or examples of similar work that reflects the requirements listed below. A resume may be sufficient to meet this application requirement, but anything submitted must clearly demonstrate the following qualifications and experience:
 - 3.1 Five or more years as an attorney involved in litigation and the administrative process at the local, state, or federal level. Labor law experience is strongly preferred.
 - 3.2 Neutrality requirement demonstrated by either: 1) Responders may not have been an advocate in a labor relations matter for an employer, or for a union representing employees, within twelve months preceding the closing date of this Request for Proposals; **or** 2) Responders have attached 4 letters of reference, including two from employer/management representatives and two from employee/labor representatives supporting responder as a neutral decision maker. Please note, responders providing the letters of reference for the neutrality requirement must still complete the reference requirement under 4. Neutrality requirement must be maintained if selected as a hearing officer, you may not represent any party before the PERB.
 - 3.3 Responder has a juris doctor degree.
 - 3.4 Relevant experience to highlight may include:
 - (1) participation in arbitration, mediation and pre-trial settlement negotiations as an advocate or neutral;
 - (2) preparation for and advocacy in administrative evidentiary hearings and court trials;
 - (3) legal representation regarding unfair labor practices or participation in the resolution of unfair labor practice charges as a neutral;
 - (4) preparation of written legal decisions or arguments;
 - (5) experience in collective bargaining as an advocate or neutral; and
 - (6) experience presiding in arbitration, or administrative or judicial proceedings.

Please Note: Resumes or other information about other project personnel should not, if possible, contain personal telephone numbers, home addresses, or home email addresses. If it is necessary to include personal contact information, please clearly indicate in the response that personal contact information is being provided.

4. References. Responder must complete and submit three (3) "Attachment E: Reference Form" with their response. Each completed reference form should include each reference's company name and contact information. The Solicitation Administrator will send the same form to Responder's reference(s) and will request each reference to fill out and return.

The State reserves the right to verify the information submitted on Attachment E before an award is made. The State reserves the right to contact the references listed in Attachment E. The solicitation response will be rejected if the State, in its sole discretion, receives information that indicates the responder is non-responsible or non-responsive.

5. Writing Sample. Responder should write and submit a written decision of no more than ten pages, double spaced in 13-point Times New Roman font, with one-inch margins on all sides, based on the hypothetical fact situation attached to this RFP as Attachment F. As a separate and last page of the writing sample, the responder must certify that the writing sample submitted reflects his or her own work and not the work of A.I. technology or others. This page does not count in the page limit. The response must demonstrate a working knowledge of the principles of labor law and procedure as applied to the hypothetical case. This writing sample will be scored for clarity and strength of legal analysis.

Please Note: Responders who have previously provided services to the PERB as a hearing officer do not need to submit a writing sample pursuant to this RFP. Instead, they can certify that they have been a prior hearing officer for the PERB and would like the writing sample score based on a previous Recommended Decision and Order to the PERB. Please indicate which prior decision the PERB should review.

6. Conflicts of Interest. Responder must provide a list of all entities with which they have relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this Request for Proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict. If no known conflicts of interest exist, Responder should state such.
7. Cost Detail. Complete and submit Attachment C, "Cost Detail" attached to this solicitation. Maximum hourly rate may not exceed \$150 per hour, as referenced in Attachment C.
8. Sample Transaction Document. Prior to award, a potential successful Responder must submit samples of any transaction documents proposed for use under the resulting contract. The State will review the transaction documents to ensure they contain sufficient detail and to review additional terms and conditions contained therein, if any. The State reserves the right to request additional detail in the transaction documents or to reject additional terms and conditions within transaction documents. Once approved by the State, Contractor may not materially change transaction documents unless a change has been approved in writing by the Commissioner of Administration, as delegated to the Office of State Procurement. Any terms and conditions included in transaction documents but not approved by the State are voidable by the State. Any terms and conditions that are in conflict with Minnesota law or in conflict with the terms of the State Contract are void. Failure to void a non-approved term or condition included in a transaction document does not waive the State's right to void any non-approved term or condition.

In addition to all requested documentation listed above, all applications must include the following documents where applicable:

- Attachment A: Responder Declarations
- Attachment B: Exceptions to State's Standard Terms and Conditions and Sample Contract
- Attachment C: Cost Detail
- Attachment D: Veterans Preference Form (If Applicable)
- Attachment E: Reference Form
- Attachment F: Hypothetical Fact Situation
- Attachment G: Pass/Fail Confirmation Checklist

DO NOT INCLUDE Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

SECTION 5 – EVALUATION PROCEDURE AND CRITERIA

The State will conduct an evaluation of responses to this Solicitation. The evaluations will be conducted in three phases:

- Phase 1 - Review responses for responsiveness and pass/fail requirements
- Phase 2 - Evaluate responses
- Phase 3 - Select finalist(s)

Phase 1 – Responsiveness and Pass/Fail Requirements

The purpose of this phase is to determine if each response complies with mandatory requirements. The State will first review each proposal for responsiveness to determine if the Responder satisfies all mandatory requirements. The State will evaluate these requirements on a pass/fail basis.

Mandatory Requirements. The following will be considered on a pass/fail basis (complete Attachment G):

- Five (5) or more years of experience as an attorney involved in litigation and the administrative process at the local, state, or federal level.
- Neutrality requirement demonstrated by: 1) Responders may not have been an advocate in a labor relations matter for an employer, or for a union representing employees, within twelve months preceding the closing date of this Request for Proposals; **or** 2) Responders have attached 4 letters of reference, including two from employer/management representatives and two from employee/labor representatives supporting responder as a neutral decision maker. Please note, responders providing the letters of reference for the neutrality requirement must still complete the reference requirement under 4. Neutrality requirement must be maintained if selected as a hearing officer, you may not represent any party before the PERB.
- Responder has a juris doctor degree.

Phase 2 - Evaluate Responses

Only those responses found to have met Phase 1 criteria will be considered in Phase 2.

The factors and weighting on which responses will be evaluated are:

1. Approach	200 points
2. Availability	50 points
3. Qualifications and Experience	200 points
4. References	100 points
5. Writing Samples	350 points
6. Conflict of Interest	50 points
7. Cost Detail	<u>50 points</u>
	Total 1000 points
8. Preference Points (if applicable)	120 points (in addition to 1000 available)

Preference points are described under Solicitation Terms and will be applied to the total score after points have been awarded.

Phase 3 - Select Finalist(s)

Only those responses that have been evaluated under Phase 2 shall be eligible for Phase 3 – selection of finalist(s) to be placed on a roster of Hearing Officers.

The State reserves the right to pursue negotiations on any exception taken to the State's standard terms and conditions, such as exceptions to insurance requirements or workers compensation. If negotiated terms cannot be reached, the

State reserves the right to terminate negotiations or take other actions as the State deems appropriate. If the State anticipates multiple awards, the State reserves the right to negotiate with more than one Responder.

SECTION 6 – SOLICITATION TERMS

1. Competition in Responding

The State desires open and fair competition. Questions from responders regarding any of the requirements of the Solicitation must be submitted in writing to the Solicitation Administrator listed in the Solicitation before the due date and time. If changes are made the State will issue an addendum.

Any evidence of collusion among responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.

2. Addenda to the Solicitation

Changes to the Solicitation will be made by addendum with notification and posted in the same manner as the original Solicitation. Any addenda issued will become part of the Solicitation.

3. Withdrawing Response

A responder may withdraw its response prior to the due date and time of the Solicitation. For solicitations in the SWIFT Supplier Portal, a responder may withdraw its response from the SWIFT Supplier Portal. For solicitations done any other way, a responder may withdraw its response by notifying the Solicitation Administrator in writing of the desire to withdraw.

After the due date and time of this Solicitation, a responder may withdraw a response if the request for withdrawal is made in writing to Solicitation Administrator within a reasonable time and prior to the State's detrimental reliance on the response.

4. Rights Reserved

The State reserves the right to:

- Reject any and all responses received;
- Waive or modify any informalities, irregularities, or inconsistencies in the responses received;
- Negotiate with the highest scoring Responder[s];
- Terminate negotiations and select the next response providing the best value for the State;
- Consider documented past performance resulting from a State contract;
- Short list the highest scoring Responders;
- Require Responders to conduct presentations, demonstrations, or submit samples;
- Interview key personnel or references;
- Request a best and final offer from one or more Responders;
- The State reserves the right to request additional information ; and
- The State reserves the right to use estimated usage or scenarios for the purpose of conducting pricing evaluations. The State reserves the right to modify scenarios, and to request or add additional scenarios for the evaluation.

5. Samples and Demonstrations

Upon request, Responders are to provide samples to the State at no charge. Except for those destroyed or mutilated in testing, the State will return samples if requested and at the Responder's expense. All costs to conduct and associated with a demonstration will be the sole responsibility of the Responder.

6. Responses are Nonpublic during Evaluation Process

All materials submitted in response to this Solicitation will become property of the State. During the evaluation process, all information concerning the responses submitted will remain private or nonpublic and will not be disclosed to anyone whose official duties do not require such knowledge. Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the State having completed negotiating a contract with the selected responder. The State will notify all responders in writing of the

evaluation results.

7. Trade Secret Information

- 7.1 Responders must not submit as part of their response trade secret material, as defined by Minn. Stat. § 13.37.
- 7.2 In the event trade secret data are submitted, Responder must defend any action seeking release of data it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the data, and any and all costs connected with that defense.
- 7.3 The State does not consider cost or prices to be trade secret material, as defined by Minn. Stat. § 13.37.
- 7.4 A responder may present and discuss trade secret information during an interview or demonstration with the State, if applicable.

8 Conditions of Offer

Unless otherwise approved in writing by the State, Responder's cost proposal and all terms offered in its response that pertain to the completion of professional and technical services and general services will remain firm for 180 days, until they are accepted or rejected by the State, or they are changed by further negotiations with the State prior to contract execution.

9 Award

Any award that may result from this solicitation will be based upon the total accumulated points as established in the solicitation. The State reserves the right to award this solicitation to a single Responder, or to multiple Responders, whichever is in the best interest of the State, providing each Responder is in compliance with all terms and conditions of the solicitation. The State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the State.

10 Requirements Prior to Contract Execution

Prior to contract execution, a responder receiving a contract award must comply with any submittal requests. A submittal request may include, but is not limited to, a Certificate of Insurance.

11 Targeted Group, Economically Disadvantaged Business, Veteran-Owned and Individual Preference

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, businesses that are eligible and certified by the State as targeted group (TG) businesses, economically disadvantaged (ED) businesses, and veteran-owned businesses will receive points equal to 12% percent of the total points available as preference.

For TG/ED/VO certification and eligibility information visit [the Office of Equity in Procurement website at https://mn.gov/admin/business/vendor-info/oep/](https://mn.gov/admin/business/vendor-info/oep/) or call the Division's Helpline at 651.296.2600.

12 Reciprocity

State shall comply with Minn. Stat. § 16C.06, subd. 7, as that applies to a non-resident vendor. This paragraph does not apply for any project in which federal funds are expended.

ATTACHMENT A: RESPONDER DECLARATIONS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. **Response Contents.** The information provided is true, correct, and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the Responder to suspension or debarment proceedings as well as other remedies available by law.
- B. **Authorized Signature.** This Declaration is signed by the appropriate person(s), with the authority to contractually bind the Responder, as required by applicable articles, bylaws, resolutions, minutes, and ordinances.
- C. **Non-Collusion Certification.**
 - 1. The Proposal has been arrived at by the Responder independently and has been submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition; and
 - 2. The contents of the Response have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any other individual prior to the due date and time of this Solicitation. Any evidence of collusion among Responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.
- D. **Organizational Conflicts of Interest.** To the best of Responder's knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons,
 - 1. a vendor is unable or potentially unable to render impartial assistance or advice to the State;
 - 2. the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
 - 3. the vendor has an unfair competitive advantage.

If after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State's Chief Procurement Officer which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to OSP, the State may terminate the contract for default. Organizational conflicts of interest terms apply to any subcontractors for this work.
- E. **Certification Regarding Lobbying.** For State of Minnesota Contracts and Grants over \$100,000, the undersigned certifies, to the best of his or her knowledge and belief that:
 - 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative

agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- F. **Copyrighted Material Waiver.** By signing its Response, the Responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response.
- G. **Diverse Spend Reporting.** The Sample Contract contains a clause for Diverse Spend Reporting. When this clause applies, Contractor will be required to register in a free portal to report diverse spend.

Please see [Diverse Spend Reporting Frequently Asked Questions](#) for additional information.

By signing this form, Responder acknowledges and certifies compliance with all applicable requirements indicated above.

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone Number: _____

Email Address: _____

ATTACHMENT B: EXCEPTIONS TO STATE'S TERMS AND CONDITIONS

The State presumes a responder agrees to the terms and conditions of this solicitation unless a responder takes specific exception to one or more of the conditions on this form.

The State reserves the right to reject, negotiate, or accept any exception listed to the State's terms and conditions (including those found in the attached "Attachment B: Sample Contract").

INSTRUCTIONS: A responder must explicitly list all exceptions to State's terms and conditions, if any (including those found in the attached Sample Contract). Reference the clause number and page number of the State's term and condition for each of a responder's exceptions. If no exceptions exist, state "NONE" specifically on the form below. Whether or not exceptions are taken, the Responder must sign and date this form and submit it as part of their response. *(Add additional pages if necessary.)*

Clause and Page Number	Suggested Change to Clause	Explanation or Justification

By signing this form, I acknowledge that the above-named responder accepts, without qualification, all terms and conditions stated in this solicitation (including the sample contract) except those clearly outlined as exceptions above.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT C: COST DETAIL

INSTRUCTIONS:

Responders must submit this Attachment C “Cost Proposal” form as their Cost Proposal. Provide a maximum hourly rate to perform all tasks detailed in Section 2. The maximum hourly rate may not exceed \$150 per hour. The hourly rate(s) identified in this Cost Proposal includes all costs, including but not limited to travel expenses, mass mailings, fees, commissions, compensation, equipment and other charges.

The State does not make regular payments based solely upon the passage of time; it only pays for services performed or work delivered after it is accomplished.

Maximum Hourly Rate: _____

ATTACHMENT D: RESPONDER FORM

STATE OF MINNESOTA VETERAN-OWNED PREFERENCE FORM

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. §16C.16, subd. 6a, the State will award a 12% preference on State procurement to certified small businesses that are majority owned and operated by veterans.

Veteran-Owned Preference Requirements - See Minn. Stat. § 16C.19(d):

- 1) The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business.
- or**
- 2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation).

Statutory requirements and appropriate documentation must be met **by the solicitation response due date and time** to be awarded the veteran-owned preference.

Claim the Preference

By signing below, I confirm that:

My company is claiming the veteran-owned preference afforded by Minn. Stat. § 16C.16, subd. 6a. By making this claim, I verify that:

- The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business.
- or**
- My company's principal place of business is in Minnesota **and** the United States Department of Veteran's Affairs verifies my company as being a veteran-owned or service-disabled veteran-owned small business (Supported By Attached Documentation)

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone: _____

Printed Name: _____ Title: _____

Attach documentation, sign, and return this form with your solicitation response to claim the veteran-owned preference.

ATTACHMENT E: REFERENCE FORM

[To be completed by the Responder]

Responder/Company Name:

Reference/Company Name:

Contact Name:

Address:

Email:

Phone Number:

[To be completed by the Reference]

1. Description of project(s):
2. Dates of Engagement:
3. Were the project(s) completed on budget? If not, please explain.
4. Were the project(s) complete on time? If not, please explain.
5. What went well with the project(s)?

ATTACHMENT F: HYPOTHETICAL FACT SITUATION

Draft a Recommended Decision and Order for PERB based on the following statement of facts in the format provided below. As a separate and last page of the writing sample, the responder must certify that the writing sample submitted reflects their own work and not the work of A.I. technology or others.

The Writing Sample should be a Recommended Decision and Order addressing the questions presented by the following Statement of Facts. Your Writing Sample should contain only your Issue Statement and your legal analysis of the facts. The following Statement of Facts includes all evidence presented at the hearing. (Do not include the Statement of Facts in your Writing Sample.) You may assume that the Union and Forest County School District filed any appropriate unfair labor practice charges and sought appropriate remedies for any unfair labor practice charges filed.

The Writing Sample should be submitted in the name of Kris Kristofferson, Hearing Officer, and include no identifying detail from those responding to the RFP. The Writing Sample will be assigned a unique identifier upon receipt by the PERB.

The Recommended Decision and Order should be double spaced, in 13-point Times New Roman font, with one-inch margins on all sides, and may not exceed 10 pages in length, not counting the certification form. Responses may be considered non-responsive if indicated formatting and length are not followed.

Statement of Facts

Forest County Elementary School principal Sharon Smith called Kelly Anderson into her office on February 8. She told Kelly that she had received a report that Kelly had shouted at a kindergartener and wanted to know what had happened. Kelly, concerned about where this conversation was heading, asked if they could wait to speak until she had a union steward with her. Principal Smith, exasperated, said, "I'm not going to make you give me an explanation, but if you are going to insist on having a babysitter in this meeting, we'll just decide what to do about this without your input." She sent Kelly back to class.

A few days later, Principal Smith emailed Kelly a written reprimand for 1) shouting at a student, and 2) being insubordinate in an investigative meeting when she refused to provide an account of what happened.

Kelly sent this reprimand to her union steward, Belle Licose. Belle immediately sent a grievance to Principal Anderson. She also made a data request for all written discipline for same and similar allegations.

Principal Anderson denied the grievance and told Belle that she was not going to give her any information. She said that because the grievance appeared to be headed toward arbitration, Belle could see the district's evidence at that point.

ATTACHMENT G: Application Pass/Fail Confirmation

Please complete this Confirmation to certify that all the application requirements as defined in the RFP are included in your proposal response.

Confirm compliance included as part of response		
	3	Qualifications and Experience (3.1-3.3) NOTE: Responder must comply with either 3.2.1 or 3.2.2, not both.
		3.1 Five or more years as an attorney involved in litigation and the administrative process at the local, state or federal level.
		3.2.1 Responder has not been an advocate in a labor relations matter for an employer, or for a union representing employees, within twelve months preceding the closing date of this Request for Proposals.
		3.2.2 Responders have attached 4 letters of reference, including two from employer/management representatives and two from employee/labor representatives supporting responder as a neutral decisionmaker.
		3.3 Responder has a juris doctor degree.



State of Minnesota Professional and Technical Services Master Contract

SWIFT Contract Number: _____

Master Contract T-Number: _____

Instructions: Instructions for completing this form are in **red**. 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 Master 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"). State and Contractor may be referred to jointly as "Parties."

Recitals

Instruction: Modify the Recitals section as necessary to address the specifics of the contract history. The text below is sample language that may be used when the contract was solicited.

1. State issued a solicitation identified as **[Solicitation identification]** **[SWIFT Event No.]** on **[Solicitation date]** for **[brief narrative describing purpose of solicitation]** ("Solicitation");
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

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 accept work under this Master Contract until this Master Contract is fully executed and the Contractor has been notified by the State's Authorized Representative that it may begin accepting Work Order Contracts.
- 1.2 Work Order Contracts. The term of work under Work Order contracts issued under this Master Contract may not extend beyond the expiration date of this Master Contract.

- 1.3 Expiration date. [Spell out full date (e.g., March 31, 2020)], or until all obligations have been satisfactorily fulfilled, whichever occurs first. The contract may be extended for up to an additional [## months/years], in increments as determined by the State, through a duly executed amendment.

2. Contractor's Duties

The Contractor shall perform all duties described in this Master Contract to the satisfaction of the State.

The Contractor, who is not a State employee, may be requested to perform any of the following services under individual Work Order Contracts:

[Provide sufficient detail of the duties the Contractor is to perform. Do this by either: 1) listing the Contractor's duties with precise detail here, or 2) using an exhibit that contains the precise duties.

Example: "The Scope of Work for this Master Contract may include one or all of the following duties as described in Exhibit C. A complete detailed description of required work will be furnished in each Work Order Contract issued."

Attaching the Contractor's proposal as an exhibit 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 Master Contract and any Work Order Contract."

The Contractor understand that only the receipt of a fully executed Work Order Contract authorizes the Contractor to begin work under this Master Contract. Any and all effort, expenses, or actions taken before the Work Order Contract is fully executed is not authorized under Minnesota Statutes and is under taken at the sole responsibility and expense of the Contractor. A sample Work Order Contract is attached and incorporated into this Master Contract as Exhibit E.

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. Representations and Warranties

- 3.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law [Insert additional statutory authorization if necessary] the State is empowered to engage such assistance as deemed necessary.
- 3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.
- 3.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

4. Time

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

5. Consideration and Payment

5.1 Consideration. The State will pay for all services satisfactorily performed by the Contractor for all Work Order Contracts issued under this Master Contract.

- 5.1.1 Compensation. The Contractor will be paid [Explain how the Contractor will be paid. For example, "in accordance with the breakdown of costs as set forth in Exhibit D.].
- 5.1.2 [Delete if no travel expenses are included in the contract.] Travel expenses. If applicable, reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$ [Insert total travel budget here. If none, insert "\$0.00"]; provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" established by the Commissioner of Minnesota Management and Budget which is incorporated in to this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- 5.1.3 Total obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Master Contract will not exceed \$ [##]. [This must be the combined total of compensation and travel expenses, if applicable.]

5.2 Payment.

- 5.2.1 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 no more frequently than monthly.
- 5.2.2 Retainage. Under Minn. Stat. § 16C.08, subd. 2 (10), no more than 90 percent of the amount due under this any Work Order Contract may be paid until the final product of the Work Order Contract has been reviewed by the State. The balance due will be paid when the State determines that the Contractor has satisfactorily fulfilled all the terms of the Work Order Contract.
- 5.2.3 Conditions of payment. All services delivered by the Contractor under a Work Order 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.

6. Authorized Representative

The State's Authorized Representative is [name, title, address, telephone number], or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

The State's Project Manager will be identified in each Work Order Contract.

Contractor's Authorized Representative. 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.

7. Exhibits

[Note: Be mindful of this order of precedence when deciding where to include additional exhibits in this clause.]

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

- Exhibit A: Contract Terms
- Exhibit B: Insurance Terms
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Price and Payment Schedule
- Exhibit E: Sample Work Order Contract

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 has 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: _____

Admin ID: _____

Exhibit A: Contract Terms

1. Prompt Payment and Invoicing.

- 1.1 Prompt Payment. The State will pay the Contractor 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 **[Delete if Exhibit D, Supplement 1 is omitted.]** Invoicing. The invoice must be in the same format as the sample invoice form approved as Exhibit D, Supplement 1 with the Contract, unless an alternative format is approved in writing by the State Authorized Representative, or delegate. See Exhibit D, Supplement 1 for a list of minimum invoice requirements.

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

- 2.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Master Contract or any Work Order 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 Master Contract or any Work Order 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 Master Contract or any Work Order Contract, that failure does not waive the provision or its right to enforce it.
- 2.4 Contract Complete. This Master Contract and any Work Order 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 for Convenience. The State or Commissioner of Administration may cancel this Master Contract and any Work Order Contract at any time, with or without cause, upon 30 days’ written notice to the Contractor. Upon termination for convenience, 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 Breach. The State may terminate this Master Contract and any Work Order Contract, with cause, upon 30 days’ written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Contract.
- 3.3 Termination for Insufficient Funding. The State may immediately terminate this Master Contract and any Work Order 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 addressed within this Contract. 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. This notice will be provided within a reasonable time of the State's receiving notice.

4. Force Majeure.

Neither party shall be responsible to the other or considered in default of its obligations within this Master Contract and any Work Order Contract 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 relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

5. Indemnification.

5.1 In the performance of this Master Contract and any Work Order Contract, the Indemnifying Party 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 Indemnifying Party's:

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

The Indemnifying Party is defined to include the 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 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 Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Master Contract and any Work Order Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

6. Governing Law, Jurisdiction, and Venue.

Minnesota law, without regard to its choice-of-law provisions, governs this Master Contract and any Work Order Contract. Venue for all legal proceedings out of this Master Contract and any Work Order 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 Master Contract and any Work Order 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. Subcontracting and Subcontract Payment.

8.1 Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Master Contract or any Work Order Contract by Contractor. Only subcontractors that have been approved by the State Authorized Representative can be used for this Contract.

After the effective date of the Master Contract or any Work Order Contract, the Contractor shall not, without prior written approval of the State Authorized Representative, subcontract for the performance of any of the Contractor's obligations that were not already approved for subcontracting when the Master Contract or Work Order Contract was awarded. During this Master Contract or any Work Order Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the State Authorized Representative, the Contractor will receive written notification that the subcontractor can no longer be used for this Master Contract or any Work Order Contract.

The provisions of the Master Contract and any Work Order Contract shall apply with equal force and effect to all approved subcontractors engaged by the Contractor. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performances of the obligations contemplated by the Master Contract and any Work Order Contract.

8.2 Subcontractor Payment. Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

9. 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.

10. 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 Master Contract and any Work Order Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Master Contract and any Work Order 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.

11. Intellectual Property Rights.

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

11.1.1 "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 Master Contract and any Work Order Contract.

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

11.1.3“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 Master Contract and any Work Order Contract. “Works” includes Documents.

11.2 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 Master Contract and any Work Order 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 Master Contract and any Work Order 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.

11.3 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 Master Contract and any Work Order Contract.

11.4 Obligations.

11.4.1Notification. 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 Master Contract and any Work Order 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.

11.4.2Representation. 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.

11.4.3Indemnification. . Notwithstanding any other indemnification obligations addressed within this Master Contract and any Work Order Contract, 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.

12. 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 Master Contract and any Work Order Contract.

13. Contractor's Documents.

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 Master Contract or any Work Order Contract whenever the Master Contract or any Work Order 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 Master Contract or any Work Order 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 Master Contract and any Work Order Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Master Contract and any Work Order Contract or afforded to the State by Minnesota law. 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 Master Contract and any Work Order Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.

15. Diverse Spend Reporting.

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

16. Publicity and Endorsement.

16.1 Publicity. Any publicity regarding the subject matter of this Master Contract and any Work Order 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.

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

17. 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.

18. [Delete if no federal funds. If federal funds will or may be used, add any specific terms or requirements to Exhibit E.] Federal Funds.

18.1 Compliance with Federal Requirements. Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Master 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.

18.2 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 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 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.]

19. 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.

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

If the value of this Master 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.

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

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

22. 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/doc/VerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

23. Affirmative Action Requirements

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

- 23.1 Covered Contracts and Contractors. If the Master 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.
- 23.2 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.
- 23.3 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- 23.3.1 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.
- 23.3.2 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.
- 23.3.3 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.
- 23.3.4 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.
- 23.3.5 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.

23.4 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 Master Contract and any Work Order Contract by the Commissioner or the State.

23.5 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.

24. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to contract execution. If Contractor's Equal Pay Certificate expires during the term of this Master 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 claims to be exempt, the State may require Contractor to verify its exempt status.

25. 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.]

Contractor acknowledges and is fully aware that 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) 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, or subscriptions available through this Master Contract and any Work Order 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 Master Contract and any Work Order Contract, the Contractor agrees to document how the changes will impact or improve the product's or 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. Contractor warrants that its Products comply with the above-mentioned accessibility Standards and agrees to indemnify, defend, and hold harmless the State against any claims related to non-compliance of Contractor's Product with the above-mentioned accessibility Standards. 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.

26. 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.

27. Survival of Terms.

The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

[Instruction: Include this Supplement for IT-related contracts, if applicable. Typically, only one of the two terms below will apply. If you are a MNIT Consolidated agency, you may contact MNIT at oet.isrm@state.mn.us to determine whether the contract requires this Supplement and which of the terms apply.]

Exhibit A, Supplement 1

IT TERMS

1. Supply Chain Security. [For hardware contracts only]

Notwithstanding anything else in this Section, this Section does not and shall not limit any other rights of the State under this Master Contract and any Work Order Contract, including, but not limited to, warranties, acceptance, and return policy, if any.

1.1 Security Practices and Preventive Controls. The Contractor will use reasonable commercial efforts to ensure that the Contractor and any subcontractors or third parties involved in assembling, manufacturing, packaging, distributing, handling, warehousing, transporting or shipping State goods, including goods intended to be but not yet delivered to the State, meet all applicable security standards and all applicable local, state, federal, and international laws, rules and regulations (hereinafter “supply chain security”).

Contractor must maintain certification/accreditation in an official supply chain security program and comply with that program’s security standards for all orders sourced from the Master Contract and any Work Order Contract. Official supply chain security program is defined as one of the following: ISO 28000 or 27036 (as applicable), SAE AS5553 or other SAE standard (as applicable), Customs-Trade Partnership Against Terrorism (C-TPAT), Authorized Economic Operator (AEO), or other program accepted in writing by the State, Office of MN.IT Services (f/k/a Office of Enterprise Technology and d/b/a MN.IT or MN.IT Services)(“MN.IT”) and the State, Department of Administration’s Office of State Procurement (“OSP”). To demonstrate certification/accreditation, Contractor must provide to OSP and MN.IT within one month following the effective date of this Contract or amendment adding this Section, whichever is later, a letter verifying its certification/accreditation in an official supply chain security program. Contractor will promptly notify OSP and MN.IT of any change to its certification/accreditation.

Alternatively, if Contractor is not certified/accredited or loses certification/accreditation, Contractor must complete a MN.IT security form to confirm that it complies with supply chain security. The form will require supporting documentation of any responses and must be completed to MN.IT’s satisfaction.

1.2 Notification of Supply Chain Security Breach. Contractor will promptly notify OSP, MN.IT, and the ordering entity, if different from MN.IT, of any breach of supply chain security involving State goods, including goods intended to be but not yet delivered to the State. Breach of supply chain security includes, but is not limited to, cargo theft, tampering, unauthorized access, or other activities that involve suspicious actions or circumstances. Goods received with viruses, malware or similar security deficiencies constitute breach of supply chain security.

1.3 Return/Rejection of Goods. Notwithstanding anything to the contrary, if a breach of supply chain security has occurred or the State in good faith suspects a breach may have occurred, including evidence that packaging or goods were tampered with or damaged, the State may reject delivery of those goods or return any of those goods already delivered. Breach of supply chain security has the meaning described in the preceding Subsection “Notification of Supply Chain Security Breach.” Rejection of delivery or return of goods shall be solely the responsibility and at the cost and expense of the Contractor.

The State may sanitize or destroy components of the goods prior to returning the goods to Contractor or instruct Contractor to promptly sanitize or destroy goods upon their return. Following the completion of any such sanitization or destruction, and upon request by MN.IT, the Contractor shall provide a Certificate of Data Destruction/Sanitization that meets the requirements of the then current version of NIST Special Publication 800-88

or DOD 5220.22-M Supplement. The Certificate of Data Destruction/Sanitization must be provided to MN.IT, if requested, within one month following the return of the goods.

At no additional expense to the State, Contractor must provide within a reasonable time frame replacement goods for any goods that were rejected at delivery or returned due to a supply chain security breach. Any costs and expenses associated with removal or replacement of the goods, including sanitization and destruction costs and expenses, will be the responsibility of the Contractor.

2. Security and Data Protection. [for cloud contracts only]

[Instructions: Remove paragraph 2.9 if the RFP otherwise includes insurance requirements for Network Security and Privacy Liability. The paragraph 2.16 (Compliance with Data Security Laws) is needed only if the agency wants to or has a reason to include those requirements (such as any potentially applicable federal requirements related to the data that might exist).

Contractor is responsible for the security and protection of State data subject to and related to Cloud Services in this Master Contract and any Work Order 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 Master Contract and any Work Order Contract, if in conflict. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Master Contract and any Work Order 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, or a cooperative purchasing venture ("CPV") member when the CPV member is the ordering entity (if CPV purchases are permitted under this Master Contract and any Work Order Contract).

"Data" has the meaning of "government data" in Minn. Stat. § 13.02, subd. 7.

"Not public data" has the meaning in Minn. Stat. § 13.02, subd. 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; 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.

2.1 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 Master Contract and any Work Order Contract. Contractor will only access State data as necessary for performance of this Master Contract and any Work Order

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 Master Contract and any Work Order Contract. The foregoing sentence does not apply if the State Chief Information Security Officer or delegate authorizes in writing the Contractor to sanitize or destroy the data and the Contractor certifies in writing the sanitization 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 or destroy any remaining data and certify in writing that the sanitization or destruction of the data has occurred. Any such remittance, sanitization or destruction will be at the Contractor's sole cost and expense.

In the event Contractor receives a request to release any State data, Contractor must immediately notify the State's data practices compliance official. The State will give Contractor instructions concerning the release of the data to the requesting party before the data is released. Contractor must comply with the State's instructions. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data by Contractor.

2.2 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 Master Contract and any Work Order 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 Master Contract and any Work Order Contract. Contractor will reasonably mitigate any harmful effects resulting from any privacy incident or security incident involving any State data.

2.3 Security Program. Contractor will make best efforts to protect and secure the State data related to this Master Contract and any Work Order Contract. Contractor will establish and maintain an Information Security Program ("Program") that includes an information security policy applicable to any and all Cloud Services ("Policy"). Contractor's Program and Policy must align with appropriate industry security frameworks and standards such as National Institute of Standards and Technology ("NIST") 800-53 Special Publication Revision 4, Federal Information Processing Standards ("FIPS") 199, Federal Risk and Authorization Management Program ("FedRamp"), or Control Objectives for Information and Related Technology ("COBIT").

Upon the State's request, Contractor will make its Policy available to the State on a confidential, need-to-know basis, along with other related information reasonably requested by the State regarding Contractor's security practices and policies. Unless inconsistent with applicable laws, Contractor and the State must treat the Policy and related information on security practices and policies that are specific to the State as confidential information and as not public data pursuant to Minn. Stat. § 13.37.

2.4 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.

2.5 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 Master Contract and any Work Order Contract.

2.6 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.

2.7 Data Center and Monitoring/Support Locations. During the term of the Master Contract and any Work Order 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 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.

2.8 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 to 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.

2.9 Insurance and Liability. Contractor warrants that it has and will maintain the insurance described below in force and effect throughout the term of the Master Contract and any Work Order Contract. 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 Master Contract and any Work Order Contract provided that Contractor warrants that the minimum coverage requirements below are met.

Professional/Technical, Errors and Omissions, including Network Security and Privacy Liability Insurance (or equivalent Network Security and Privacy Liability coverage endorsed on another form of liability coverage or written as a standalone policy):

This policy must provide coverage for all claims Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to the Master Contract and any Work Order Contract, including but not limited to claims which may arise from failure of Contractor's or a subcontractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of confidential or private information, transmission of a computer virus or denial of service.

Contractor is required to carry the following minimum limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and, unless Contractor maintains an audited net worth of at least \$100 million, the deductible may not exceed \$100,000 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 the Master Contract. Contractor shall maintain such insurance for a period of at least three (3) years following expiration or termination of the Master Contract. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

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 Master Contract and any Work Order Contract. If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor will 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. Contractor is responsible for payment of Master Contract and any Work Order Contract related insurance premiums and deductibles. If Contractor is self-insured, a Certificate of Self-Insurance must be provided to the State. 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. 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. The State reserves the right to immediately terminate the Master Contract and any Work Order Contract if the Contractor is not in compliance with the insurance requirements of this sub-section and retains all rights to pursue any legal remedies against the Contractor.

Notwithstanding any limitation of liabilities in the Master Contract and any Work Order Contract, the Contractor shall be liable for all damages to the extent such damages are within the insurance limit.

2.10 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 Master Contract and any Work Order Contract that apply to Contractor with respect to such data.

2.11 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.

2.12 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.

2.13 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 Master

Contract and any Work Order 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 Master Contract and any Work Order 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.

2.14 Background Checks. Contractor represents that it has conducted and will conduct background investigations into all of Contractor's agents, employees, and subcontractors that will provide Cloud Services to the State. Such background investigations must have been or will be conducted by investigating local, state and federal criminal records, local, state and federal civil case records, and employment references.

If any provision of this sub-section is found to violate any applicable laws, rules, or State policies, then the Contractor will be relieved of all obligations arising under such provision. Notwithstanding anything to the contrary in this sub-section, this sub-section is only applicable and effective to extent that it is consistent with applicable laws, rules, and State policies.

2.15 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.

[Additional language an agency should consider including if the category of data falls in the scope of these requirements. Sub-section "Compliance with Data Privacy and Security Laws and Standards" must be reviewed prior to inclusion in any Contract. Only those applicable should be included.]

2.16 Compliance with Data Privacy and Security Laws and Standards. Contractor must comply with all requirements, restrictions, and conditions that apply to the Office of MN.IT Services in the July 1, 2015, Amended MNsure Data Sharing Contract, currently available at <https://www.mnsure.org/images/MNIT-MNsuredata-sharing-Contract-2015-07.pdf>, and as amended. This document, as amended, is fully incorporated herein.

Contractor shall comply with the Health Insurance Portability Accountability Act ("HIPAA"), the HITECH Act, and other similar privacy laws. Contractor also shall comply with the HIPAA Privacy Rule, HIPAA Security Rule, and other similar rules, regulations, and laws, including future amendments thereto.

Contractor shall comply with all applicable requirements, restrictions, and conditions set forth in the Criminal Justice Information Services ("CJIS") – Security Policy, Version 5.3, dated 8/4/2014, including, but not limited to, conducting

FBI fingerprint background checks on all of Contractor's agents, employees, and subcontractors that have or will have access to Criminal Justice Information ("CJI").

Contractor acknowledges that for the purposes of this Master Contract and any Work Order Contract when storing, processing, transmitting or otherwise accessing State data subject to the Family Educational Rights and Privacy Act ("FERPA"), it is designated as a "school official" with "legitimate educational interests" in State data and associated metadata, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Contractor shall use State data only for the purpose of fulfilling its duties under the Master Contract and any Work Order Contract and it will not monitor or share such data with or disclose it to any third party except as provided for in this Master Contract and any Work Order Contract, as required by law, or as authorized in writing by the State. By way of illustration and not of limitation, Contractor will not use such data for Contractor's own benefit and, in particular, will not engage in "data mining" of such data or communications, whether through automated or human means, except as necessary to fulfill its duties under this Master Contract and any Work Order Contract, or as specifically and expressly provided for in this Master Contract and any Work Order Contract, as required by law, or authorized in writing by the State. Contractor agrees, upon request, to provide the State with a written summary of the procedures Contractor uses to safeguard State data.

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, currently 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, currently available online at: https://www.pcisecuritystandards.org/document_library.

Contractor shall comply with IRS Publication 1075, Exhibit 7, which is incorporated herein.

For the term of this Master Contract and any Work Order 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 Master Contract and any Work Order Contract.

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

Exhibit B: Insurance Requirements

[The insurance requirements below generally represent the minimum insurance requirements. 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 questions.]

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 this Master Contract.
- 1.2 Contractor shall not commence work under the Master Contract and any Work Order 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 this Master Contract, unless otherwise specified in this Master Contract or any Work Order Contract.
- 1.3 The failure of the Contractor to provide a Certificate of Insurance, for the policies required under this Master Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Master Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.
- 1.4 The State reserves the right to immediately terminate this Master Contract and any Work Order 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: [Add agency contract holder’s address below.]

[Insert Agency Mailing Address]

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 Master Contract and any Work Order 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 Master Contract and any Work Order 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 policy limits with the exception of professional liability.
- 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.
- 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 Master Contract.

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

- 4.1 Commercial General Liability Insurance.** [If you choose to remove this clause, you must complete and sign an [Insurance Waiver form](#).] 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 Master Contract and any Work Order 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

- 4.2 Commercial Automobile Liability Insurance.** [If you choose to remove this clause, you must complete and sign an [Insurance Waiver form](#). Auto Liability insurance is 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 the Master Contract and any Work Order 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.

- 4.3 Workers' Compensation Insurance.** [This is a statutorily required clause and must remain in the contract. Do not remove.] 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.

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 Master 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).** [Include this insurance requirement when there is property owned by the state that is or may be in the Contractor's care, custody, and control. Please note this coverage should be used if the Contractor is removing the state property from state grounds.] 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."]

SAMPLE

Exhibit D: Pricing

[If payment is fully described in Contract Section 5, indicate this page is “Intentionally Left Blank.”]

SAMPLE

Exhibit D, Supplement 1 Sample Invoice and Quote

[Add sample invoice here as part of Exhibit D, Supplement 1.]

Attached is a sample invoice and quote.

Contractor is required to use the sample quote and sample invoice for all transactions under this Master Contract. Contractor may not materially change either document unless the change has been approved in writing by the State's Authorized Representative. Contractor may not modify the sample quote or sample invoice to provide less detail regarding purchases under this Master Contract. Contractor hereby waives the right to enforce any term in either sample which contradicts or modifies any term of the solicitation, Master Contract, or any Work Order 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: [review invoice requirements and modify to fit scope of the project.]

- 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
Sample Work Order Contract



State of Minnesota
Professional and Technical Services
Work Order Contract

This Work Order Contract is between the State of Minnesota, acting through its Commissioner of _____ ("State") and _____ ("Contractor"). This Work Order Contract is issued under the authority of Master Contract T-Number _____, SWIFT Contract Number _____, and is subject to all provisions of the Master Contract which is incorporated by reference.

Contract

1. Term of Contract

1.1 Effective date. ____, 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 work.

1.2 Expiration date. ____, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. Scope of Work

The Contractor shall perform all duties described in this Contract to the satisfaction of the State.

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

3. Consideration and Payment

3.1 Consideration. The State will pay for all services performed by the Contractor under this Work Order Contract as follows:

3.1.1 Compensation. The Contractor will be paid _____.

3.1.2 Travel Expenses. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Work Order Contract will not exceed \$_____.

3.1.3 Total Obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Work Order Contract will not exceed \$_____.

3.2 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 no more frequently than monthly.

4. Project Managers

The State's Project Manager is _____. The State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Project Manager is _____. If the Contractor's Project Manager changes at any time during this Work Order Contract, the Contractor must immediately notify the State.

5. Diverse Spend Reporting.

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

SIGNATURES AS REQUIRED BY THE STATE.